

**TRANS-JENNERED
AMERICA**
MATT LABASH

the weekly

Standard

JUNE 15, 2015

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ATTORNEYS AT WAR

WILLY STERN
on Israel's
military lawyers

The IDF in Gaza,
August 2014

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COVER: NEWS.COM



Bad Vibrations in Baltimore

The *Washington Post* has never paid much attention to nearby Baltimore. Which is no great shock, of course: Downtown Baltimore is 40 miles from the *Post* newsroom, which tends to ignore the immediate Virginia and Maryland suburbs of Washington as well. THE SCRAPBOOK has always found this regrettable, and a little puzzling, too, since we would guess that the vast majority of *Post* subscribers live in those same Virginia and Maryland suburbs. But the *Post*'s business is the business of the *Post*, not THE SCRAPBOOK—and as long they spell the name of THE WEEKLY STANDARD correctly, we'll leave it at that.

However, even the *Post* couldn't shield its eyes from the recent riots in Baltimore, which were prompted by the death of a young man in police custody and, as riots invariably do, devastated the lives and property of people least capable of recovering from disorder and violence. But that is not quite the way the *Post* approached the story. In its news and editorial pages alike, its primary interest has been to lay the blame for Baltimore's various problems squarely at the foot of Baltimore's police department, which has found itself besieged by press and public and, in those neighborhoods most affected

by violence and vandalism, surrounded (along with the fire department) by hostile crowds and assorted armed insurrectionists.

Indeed, on the morning after Baltimore's chief prosecutor brought murder and manslaughter charges against six officers—"I heard your calls for 'no justice, no peace'"—the *Post* weighed in with a front-page account that seemed to share the joy of the moment in Baltimore's burned-out quarter: "Protesters who had grown hoarse calling for police to be held accountable," the story explained, "seemed almost disoriented by getting their wish. Some toggled between euphoria and skepticism. Others tried to keep the pressure on, saying only that a conviction would equal justice." The only damper on the "festive vibe" celebrated by the *Post* reporters was the city's insistence on maintaining its 10 P.M. curfew for an additional day.

Of course, the upshot of all this is that the Baltimore police have retreated from confronting Baltimore's rioters, and responded to calls (widely echoed in the pages of the *Post*) to reduce their presence in high-crime neighborhoods. With predictable results: Over the Memorial Day weekend, for example, there were 32 shootings in the city of Baltimore and

9 homicides. Violent crime, especially murder, seems to be breaking all records since recordkeeping began.

Now comes the *Washington Post* with an angry rebuke—to the police: In an editorial entitled "Bloody Baltimore," the *Post* thundered that "soon after the rioting . . . ended in late April, the world's media turned their gaze elsewhere. Then, as a petulant police force retreated to its station houses, the real carnage began." Petulant police force? It sounds to THE SCRAPBOOK as if the cops of Baltimore are being prudent, not petulant, and behaving exactly as the *Post* and its friends in the street would prescribe.

Which is the great paradox of this story. No doubt, the Baltimore Police Department is far from perfect, and there may well be much room for reform of its practices. But the manifold problems of poverty, crime, and economic blight are not the fault of the cops; and the fact is that, in Baltimore as in other cities across America, including the *Post*'s own Washington, D.C., the police are essential in preserving not just civil order but in protecting the lives and property of those citizens most vulnerable to the "festive vibe" of mayhem and violence.

Forget that, and you get Memorial Day weekend in "bloody Baltimore." ♦

Criminalizing Dissent

Back in February, Rep. Raúl Grijalva, D-Ariz., wrote menacing letters to various universities, wanting all sorts of details about the funding received by professors who are allegedly out of step with the prevailing opinions on climate change, as well as demanding copies of official communications and information on university policies that could be used to bring pressure to bear on these out-of-step scientists. It was obviously but a short step

from Grijalva's letters to dragooning university scientists before a government panel and demanding to know, "Are you now or have you ever been a global warming skeptic?"

Grijalva was eventually shamed enough to drop his inquest, but the episode apparently had no lasting effect on his Capitol Hill colleagues. On May 29, Senator Sheldon Whitehouse, a Rhode Island Democrat, one-upped Grijalva by writing a *Washington Post* op-ed arguing that anti-racketeering RICO laws should be used to prosecute global warming skeptics. In

Whitehouse's view, the fact that RICO laws have in the past been used against tobacco executives offers a precedent for hauling global warming skeptics into court.

This is atrocious for many reasons, starting with the fact that, for decades, virtually no scientist denied a link between smoking and cancer. Yet even among those who believe climate change is a threat, there are wildly divergent opinions about the practical impacts and corresponding policy solutions. Indeed, what made Grijalva's witch hunt especially alarming is that

he targeted scientists such as the University of Colorado's Roger Pielke Jr., who had written a book calling for a carbon tax to deal with global warming. Being insufficiently supportive of Grijalva's cause was still enough to merit government intimidation.

The other problem is that racketeering laws have long been stretched to the point of becoming an all-purpose tool for government prosecutors to target people who are far from being racketeers. In 1994, the Supreme Court ruled that RICO statutes could be applied to pro-life activists on the grounds that interstate commerce can be affected even when the organization being targeted doesn't have economic motives. (Contra Planned Parenthood's protestations, this ruling at least underscored that abortion is a brisk, if gruesome, business.)

While there's no shortage of money in energy, Whitehouse's logic for treating dissent on global warming as a criminal enterprise doesn't pass the laugh test. He does little more than cite a report saying climate change dissent "span[s] a wide range of activities, including political lobbying, contributions to political candidates, and a large number of communication and media efforts that aim at undermining climate science." If coordinating lobbying activities and political messaging is a crime, we're going to have to lock up most of Washington, D.C. Unless, of course, we're just going to scrap any pretense of political neutrality in the justice system. Top men like Sheldon Whitehouse can make sure we hear from the scientists they approve of and prosecute the ones who dissent from their preferred conclusions.

What may be most disconcerting is that a sitting U.S. senator called for legal sanctions to silence political opposition in one of the largest American newspapers and there was almost no opprobrium in response. If more people don't start pushing back at politicians with dangerous ideas about political discourse, it's only a matter of time before they actually succeed in criminalizing dissent. ♦



Ridiculed—for Now

The media have no problem concocting scandals almost out of thin air when it comes to GOP candidates, so THE SCRAPBOOK continues to be agape at the journalistic treatment of this season's Democratic field. When the media aren't ignoring questions surrounding Hillary Clinton's billion-dollar slush fund masquerading as a charitable enterprise, they are fawning over socialist Bernie Sanders's call for 90 percent tax rates, and positively glowing about Martin O'Malley, no matter that the former Maryland governor had an active hand in turning the state into the pit of corruption and racial animus it is today.

But finally we have a candidate who may test the media's resolve always to make Democrats look as good as possible. Former Rhode Island senator Lincoln Chafee entered the Democratic primary in a fashion that was quizzical to say the least. He announced his candidacy with a speech in a lecture hall at George Mason University in Virginia, an odd venue that was barely full. And from that speech there were three big takeaways that defined his policy vision, though perhaps not in the way that Chafee intended. One, he wants to negotiate with ISIS. Two, he wants America to adopt the metric system. Three, he's so crackpot he thinks these two ideas are somewhat related.

The first point barely needs rebutting—one does not negotiate with a fanatical death cult. As for the switch to the metric system, this would represent “a symbolic integration of ourselves in the international community after the [foreign policy] mistakes” of recent history. With such a dramatic gesture of goodwill, surely ISIS will be willing to go the extra kilometer to see us as part of the brotherhood of man and lay down their arms. And Chafee was quick to note that adopting the metric system could bring with it a financial benefit, as it supposedly did Canada. That should erase the \$49 trillion in unfunded Medicare and Social Security liabilities, posthaste.

THE SCRAPBOOK would like to note that the metric system is overrated, and imposing it from Washington is unnecessary and unwarranted. To the extent that the metric system makes sense, American scientists and businesses have already adopted it. But the metric system

doesn't always make sense. The fact that there's no unit of measurement between a centimeter and meter is impractical to say the least. Fahrenheit is far more precise than Celsius, and it's usually more convenient to make finer measures in pounds than kilograms. And if you have to do a little extra math to realize that there are 6.77 bushels to a hogshead, well, it's just a good reminder of American exceptionalism.

So far, the media have done nothing but make jokes about Chafee on Twitter, but give them time. If faced with choosing the bold progressive agenda of a cranky, also-ran New England enthusiast for the metric system or the gun-loving Republicans with inconveniently better ethics and stellar governing records—we're confident the media will stay true to their authentic selves. It may require asking the American people to swallow a liter of nonsense, but at least they'll have done their part to keep a Republican out of the White House. ♦



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A Room of One's Own

Move for a job, they said. It's the only way to advance your career, they said. Move out of your childhood bedroom, they said.

To be honest, I can't really fault that last point. There is little more disheartening than a prolonged unsuccessful job search during which the formerly independent college student has to move back home.

But spending the better part of a month living out of a suitcase and sleeping on a friend's couch has to be pretty close. I'm more settled in my cubicle than in the city where I am supposed to be living.

Welcome to the futon stage of life. It's that period of young adulthood when my friends have moved out of their dorm rooms but are years away from being able to offer me a guest room. It's part of the uncomfortably long limbo between getting a desk and getting a permanent address. I'm in it right now: I'm employed and apartment seeking.

Sadly, so are thousands of other millennials who moved to the D.C. area and helped make it the supposed "best city to live in during your twenties."

Supply and demand is Econ 101. And given the flood of interns, recent college graduates, and others all arriving for fun jobs in the city, rent is sky-high. There are too many of us and too few places for rent.

Welcome to Craig's List, home of houses rented month by month and room by room. It's the rolodex of girls whose third housemate got engaged and moved to Ohio, new faces in town who need help to make rent, and opportunistic suburban homeown-

ers who figure that someone desperate enough would pay to live in their basement, scammers, and people with questionable command of written English.

Sometimes they post pictures and sometimes addresses and, if you're very lucky, both. That's the sign to make contact.

It's time for the first email. Take all the first-date clichés born of 10,000 romantic comedies and condense



them into two sentences to send off into the digital void. How do you strike just the right note?

I'm quiet, but not averse to being social. I like to stay in but sometimes to go out. I watch Netflix and follow some cult shows, but understand that you, the potential housemate, find *Game of Thrones* just too much gore. For the duration of this conversation, I will restrain my disdain for reality TV. There is no such thing as perfection, after all.

I have nonthreatening hobbies that are endearingly quirky. I read Russian novels and like to ballroom dance, unless you think that's too nerdy.

Then I'll tell you that I listen to Irish punk rock and like watching James Bond. I am the manic pixie dream girl, unless you want the ghost roommate.

Does any of this even matter? I'm not really sure.

In the world of apartment rentals, housemates, and finding other people who can pay bills on time and clean up after themselves, good options disappear more rapidly than a steak thrown to a swarm of piranhas, a lamb that falls before the wolf pack, a young gazelle to a pride of starving lions. One scientist who spent a year watching great white sharks hunt off the coast of South Africa found that those beasts got more than half of the prey they attacked. If I could be so lucky! In my experience, when the homeless and enquiring send out emails, only one in three gets a reply, and even those sparse responses are mostly duds.

One is a scam, one begins by calling me someone else's name, and one foists me off on another website, there to enter a labyrinth of questions about my zodiac sign and smoking preferences. (If I'd really thought that being a Capricorn would influence my housing search, I would have asked a psychic for my address, rather than the Internet.)

And the last response? The one that makes grammatical sense and sounds like it comes from a real person? She's free for two hours on Tuesday and might make a decision after that.

Or might not. I'll never know because that's the last I've heard from her.

In the meantime, my coworkers have started to suggest that I just move into the office and sleep curled up in an abandoned blanket under my desk. Time to send one more email and hope to stave off the prospect of corporate shantytown.

ERIN MUNDAHL

George W. Bush Was Right

William Butler Yeats sure had the Age of Obama right:

*Things fall apart; the centre cannot hold;
Mere anarchy is loosed upon the world,
The blood-dimmed tide is loosed, and everywhere
The ceremony of innocence is drowned.*

Yeats goes on to suggest that “surely some revelation is at hand.” Public opinion polls are modern democracy’s substitute for revelation. And there’s an interesting new poll at hand. One might even call it revelatory.

What does CNN’s recent survey reveal? That for the first time in a decade, more Americans now have a favorable than an unfavorable view of George W. Bush. Viewed positively by only a third of Americans when he left office in 2009, Bush had improved to 46 percent/51 percent favorability/unfavorability a year ago. He’s now at 52/43.

Now it’s of course true that 52 percent of Americans can be wrong. They were when they voted to reelect President Obama in 2012. But in this case, we think they’re saying something instructive. What they’re saying is that George W. Bush was—basically—right.

Bush was right to take the jihadist threat seriously after 9/11 (though he may have fallen prey to euphemism at times in describing it). He was right to insist on legislation that authorized surveillance and other efforts to thwart and defeat the terrorists.

Bush was also right to see that the combination of terrorism, Islamic jihadism, and weapons of mass destruction is particularly dangerous. He was right to think that Iraq, Iran, and North Korea posed particular threats. It’s unfortunate he couldn’t do more about Iran and North Korea—but his administration ended with Iraq pacified and reasonably calm, and with pro-Western and anti-jihadist elements strengthened in Iran and Syria. Unfortunately, he was succeeded by an administration that failed to support those forces in Iran in 2009, or in Syria in 2011.

Bush was right that there is no substitute for American leadership in a dangerous world, and that “leading from behind” is no substitute for . . . leading. He was right to see that preemption would at times be necessary in dealing with 21st-century threats, and that, like it or not, there would sometimes be no substitute for American boots on the ground. He was right to sense that the old Middle East was unsalvageable, and that a freedom agenda aimed at fostering constructive regime change was right and necessary.

Bush certainly made mistakes. His first-term team

of Rumsfeld, Powell, and Rice was often dysfunctional. He was too slow to react to setbacks in Iraq, though he deserves enormous credit for the surge in 2007, which effectively won the war. He failed to deal decisively with Iran even after the mullahs had been intimidated and weakened by the intervention in Iraq, and in his second term (with the exception of the surge) backed off pretty much across the board, even leaving the Israelis to deal with the Iranian-North Korean nuclear plant being built in Syria—an abdication of American responsibility that set an unfortunate example for his successor.

Bush’s mistake was not his ambitious foreign policy agenda. It was the failure to educate the country as to its merits and necessity and then the decision to retreat from it more than perhaps he had to. The Bush Doctrine and the freedom agenda should have been pursued more robustly. The problem with Bush was that he wasn’t Bush-like enough.

Perhaps Bush wasn’t quite up to the task he set for himself and for the country. But which president in the last century got it all right? Franklin Roosevelt deceived himself about Stalin. China went Communist and North Korea invaded the South on Harry Truman’s watch. Ronald Reagan pulled out of Lebanon in a way that encouraged the Iranian regime, and other jihadists, to believe that terror worked.

But those presidents were all basically right, and so was Bush. Bush was perhaps most like Truman, who got the big picture right and laid the groundwork for a reasonably successful U.S. foreign policy for subsequent decades. But Truman, who left office even less popular than Bush, had a responsible and competent successor. Bush had no such luck.

Truman’s party returned to power after eight years. Eisenhower’s vice president was defeated, as Obama’s heir likely will be. And when Truman’s party returned to office, the torch passed to a new generation with John Kennedy. But it was a torch Truman lit.

In his eulogy to Yeats, W. H. Auden wrote,

*Follow, poet, follow right
To the bottom of the night,
With your unconstraining voice
Still persuade us to rejoice.*

Whose will be the unconstraining voice that will, in 2016, persuade us to emerge from the depths of Obama’s foreign policy and rise to our historic task?

—William Kristol

Transjennered America

Hero worship in our time.

BY MATT LABASH

For as long as I can remember, I've been ignoring Bruce Jenner. As a child of the '70s, I ignored him in the cereal aisle, where his Olympic-champion mug couldn't entice me to pick his terminally bland Wheaties over more healthful Sugar Smacks. I ignored him in the '80s, during his star-turn in *Can't Stop the Music*, a disco-tinged Village People biopic that saw him nominated for a Golden Raspberry Award for worst actor. In the '90s, I don't recall Jenner at all, as I was rather busy ignoring him.

By the mid-2000s, however, Jenner had become much more difficult to ignore. He'd plighted his troth to the Kardashian clan, America's First Family of publicity tapeworms, who are as long on fame'n'money as they are short on talent, unless you consider leaked sex tapes and Instagram butt-selfies a talent. As the paterfamilias/house eunuch of the Kardashian seraglio—both in real life and in the fake reality show *Keeping Up with the Kardashians* (now in its tenth smash season)—Jenner allowed viewers to witness him getting ignored by his daughters and serially humiliated by his wife. “Momager” Kris (her self-appointed nickname as her daughters' tireless manager) would leave him behind on trips, confiscate his ATM card, and generally keep his *huevos* in her purse, well before he started carrying one (the two recently divorced).

Now, as you've inescapably heard, Jenner is downright impossible to ignore. Namely, for the reason that he is no longer a him but a her. After announcing in a Diane Sawyer special

in April that he was transitioning genders, albeit retaining his heterosexuality, Jenner let the other Manolo drop this past week, declaring “Call Me Caitlyn” from the cover of *Vanity Fair*.

Just how much courage it takes to come out in Transjennered America is a matter of debate. When it is met with a two-hour ABC special and a 22-page cover spread in *Vanity Fair*, the leader of the free world is tweeting attagirls, Estée Lauder is considering endorsement deals, your first public outing will be to accept the Arthur Ashe Courage Award from ESPN—well, call it courage if you must, but this definitely ain't your grandfather's Battle of the Bulge.

Lovingly shot in full flower by Annie Leibovitz, after the breast augmentation, facial feminization procedures, and tracheal shave, Caitlyn looked nothing like a hulking former decathlete, but rather, a hulking Vargas girl or a creamy Old-Hollywood starlet, albeit a heavily airbrushed one.

Her new incarnation was met with pure rapture by an adoring Internet, where Caitlyn was compared to everyone from Jessica Lange to various female deities, her burdensome worm now transformed into a beautiful

butterfly. Only a handful were rude enough to notice the Y-chromosome in the biological punchbowl—she's still smuggling said worm under her satiny Edy Corset. (Caitlyn has indicated that she plans on sticking with her original-issue equipment for now, which has no bearing on her womanhood.)

In all the hubbub, there was another transition as well. Bruce Jenner had spent the better part of the last decade being a tabloid joke, renowned for his dysfunctional family, bad haircuts, and even worse plastic surgery. But Caitlyn Jenner achieved instant secular sainthood as a profile in courage—a cross between JFK, MLK, and J.H. Christ, all swaddled in elegant Donna Karan couture.

The likes of Lady Gaga and Ellen DeGeneres saluted her bravery. She set land-speed records on Twitter, where her new Caitlyn account garnered a million followers in four hours, breaking Barack Obama's old record, though he too tweeted, “It takes courage to share your story.” Just how much courage it takes in Transjennered America is a matter of debate. When your coming out is met with a two-hour ABC special and a 22-page cover spread in *Vanity Fair*, the leader of the free world is tweeting attagirls, Estée Lauder is considering endorsement deals, your first public outing will be to accept the Arthur Ashe Courage Award from ESPN, all to be followed by another reality show (sorry, a “docu-series”) called *I Am Cait*—well, call it courage if you must, but this definitely ain't your grandfather's Battle of the Bulge.

Then there are Caitlyn's enthusiasts/enforcers in social media. A Twitter mob tarred-and-feathered *Nickelodeon* star Drake Bell, who was foolish enough to tweet that he'd still call Bruce Bruce. (“Ok Drake, your name is now Donna,” tweeted @Onision. “Enjoy being called what you don't identify as, Donna.”) CNN's media watchdog, Brian Stelter, couldn't help but notice that some people were “misgendering” Caitlyn. “After all,” he tsked, “Jenner's *Vanity Fair* cover was very clear, ‘Call me Caitlyn.’” An ACLU lawyer wrote that even mentioning a trans-person's

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“birth-assigned sex is an act of hatred.”

The pronoun police at GLAAD distributed a helpful tip-sheet for journalists who should now see that Caitlyn “is—and always has been—a woman.” GLAAD commanded journalists to “avoid the phrase ‘born a man’ when referring to Jenner.” And the fierce guardians of free speech in the press did what they always do in such situations—they hung their heads and bleated obediently, cisgendered terrified to misgender. The *Washington Post*’s LGBT/straight etiquette columnist (yes, they have one) highly recommended GLAAD’s tips. And a *Post* colleague went so far as to set up a Twitter bot that would automatically correct anyone using “he” instead of “she” when writing about Brucelyn.

In less enlightened times—say, about a year ago—hyperventilating over such classification happened only in the rarefied climes of gender studies classes and *Huffington Post* cubicles. Now, we’ve all been conscripted. Even Facebook—the modern bible of bourgeois America, where bored housewives post pictures of their little soccer stars and last night’s Applebee’s entree—has come up with 58 different gender designations to appease the don’t-enslave-me-with-your-binary-choices crowd. And though I’ve never run a decathlon in Caitlyn’s Jimmy Choos, after perusing Facebook’s list of options, I think I have a better understanding of Jenner’s “journey,” as journalists seem constitutionally required to call it. Who among us hasn’t felt like a “Neutrois” trapped in a “Two Spirit’s” body?

Bad example—I have no idea what those designations mean. But to bring the illustration closer to home, I am a Latino. Despite being assigned an Anglo at birth, I’m Mexican on the inside. I love *mole poblano*, Dos Equis, and the films of Salma Hayek. And if I decided to turn my insides out, fully inhabiting my own Latino-ness by, say, changing my name to Pancho Villa and sporting the sombrero I got from that kid’s birthday party at Chevys Fresh Mex—well, then I’d rightly expect everyone to celebrate me as a genuine Latino, instead of as an Anglo

pretender playing dress-up. Or maybe not. I’m no hero like Caitlyn.

Read or watch Jenner’s coming-out interviews, and in her quieter moments, when she’s bleeding through as an actual human being, rather than

her choices or don’t, but hers is a tough row to hoe, as voluminous medical studies bear out, showing the transgendered are at risk for everything from higher suicide rates to increased mental disorders.



priming as a political mascot for disrupting the old privileged, microaggressive, cisgendered order (Jenner has additionally admitted to being both a Republican and a Christian, which really takes balls, pardon the expression), only a brute wouldn’t feel compassion for her doubts and fears and insecurities, for literally being uncomfortable in her own skin. Agree with

But we are not to pity or even empathize with our heroes, we are to venerate them. So I will do my part, and play charades, and fall in line. I will walk outside, see the blue sky, and pretend with everyone else that it is pink. I will say, as NBC News said before me, “You go, girl!” Or maybe I’ll put it in my own words: “*Ándale, chica!*” as we transitioning Latinos say. ♦

Predicting Justice Kennedy

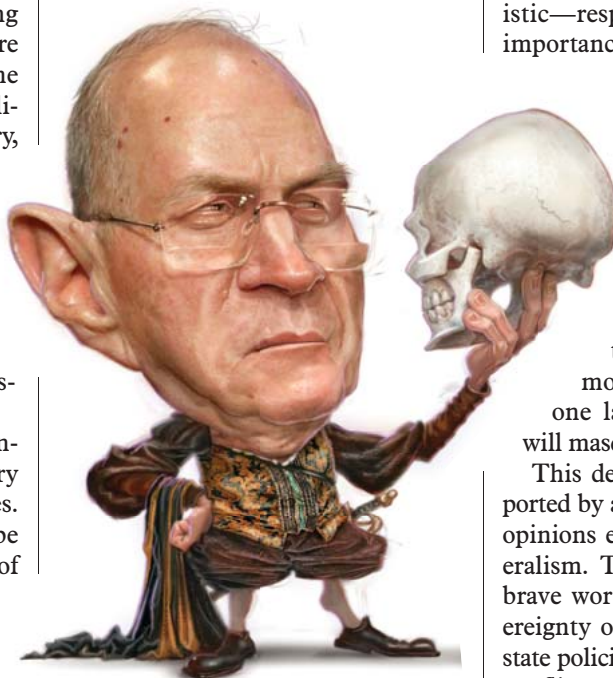
The status of same-sex marriage shouldn't come down to one man's opinion. **BY ROBERT F. NAGEL**

Later this summer the Supreme Court will decide whether the Constitution requires that every state recognize same-sex marriages. Thus, in a ritual that would seem bizarre if it had not become so ordinary, nine lawyers will issue a decision authoritatively resolving subtle and far-reaching issues that are not distinctively legal. After all, the ancient institution of marriage implicates difficult questions about history, culture, psychology, and morality. Adding to the strangeness of a vast and proud nation breathlessly awaiting the opinions of these nine individuals on such matters is the widely recognized likelihood that the decisive vote will be exercised by just one man, Justice Anthony Kennedy.

Most observers think Justice Kennedy will vote to require that every state recognize same-sex marriages. The basis for this prediction can be dressed up in the arcane language of lawyers but it, too, is not distinctively legalistic. In three major cases, Kennedy has voiced a strong sense of sympathy for the plight of homosexuals in our society. He has shown himself to be deeply suspicious of the motives of those who have moral reservations about homosexual conduct. And he has asserted that the decision to engage in such conduct implicates the deepest considerations of self-respect and self-definition.

There are, however, two reasons to

doubt that the issue is all that clear for Justice Kennedy. The first is that invalidation of traditional marriage laws would impose a single policy on all 50 states. This result would conflict with Kennedy's emphatic and eloquent



support for the independent authority of states in our federal system. In fact, Kennedy has recently invoked this principle of federalism as a reason for national deference to state decisions about the institution of marriage.

The second reason for caution in predicting Kennedy's vote is that his support for gay rights has been apparent in cases where he was convinced that the motivation for differential treatment of homosexuals was based specifically on prejudice or animus. This supposition, for example, was

plausible (though not inevitable) in a case involving criminal prosecution of homosexual sodomy and in a case challenging a broad legal bar to the assertion by gays of legal claims of discrimination.

Justice Kennedy is aware, of course, that marriage has been defined in terms of heterosexual couples for millennia and in many different countries. Whatever may be his opinion about controversial claims regarding historical exceptions to this pattern, it is rather difficult to see hostility to homosexuals as a central consideration behind an institution deeply embedded in so many historical and cultural circumstances.

The cynical—but perhaps realistic—response is that, despite the importance of state sovereignty and the unique place of marriage in human history, Justice Kennedy will vote to strike down traditional marriage laws because he has simply chosen sides in the culture wars. If true, this means that he will vote to impose his political and moral preferences—that is, one lawyer's personal opinions will masquerade as law.

This depressing possibility is supported by aspects of Justice Kennedy's opinions extolling the virtues of federalism. The fact is that Kennedy's brave words in support of state sovereignty often appear in cases where state policies do not represent any real conflict with national priorities. For instance, he has supported a degree of state autonomy over policies regarding guns in schools and violence against women. But the national statutes on these issues were largely superfluous displacements of existing state laws. In contrast, on same-sex marriage there are a variety of state policies representing sharply differing moral positions.

Where state autonomy would actually threaten the authority of the central government, Kennedy's support for decentralization dissolves into fervent nationalism. Given the obvious symbolism of the federal judiciary

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GARY LOCKE

and the Constitution as embodiments of nationhood, this is especially true when central authority takes the form of constitutional decisions by federal judges. A striking illustration is Justice Kennedy's opinion in *Brown v. Plata*, a 2011 decision approving of a federal district court injunction ordering California to release 46,000 prisoners in order to ease overcrowding and improve medical care within the prison system.

This decision authorized federal displacement of traditional state authority over law enforcement and prisons. It declared quintessentially executive and legislative judgments about matters like prison management, public safety, and budgeting to be within the province of federal judges. In short, disagreements between state and federal authorities led to an emphatic and radical assertion of national power.

It is possible to dismiss *Brown v. Plata* as an unavoidable consequence of the supremacy of federal constitutional rights over state intransigence. The underlying finding of a constitutional violation, however, was itself a dubious assertion of national power. The grossly inadequate levels of medical care provided to many prisoners arguably did not violate the rights of those prisoners who had not been subjected to that care and, in any event, did not necessarily justify the wholesale federal takeover of the state prison system.

The troubling possibility raised is that Justice Kennedy's commitment to federalism fades precisely in proportion to the doubtfulness and fragility of the national government's claim to constitutional authority. This possibility finds spectacular confirmation in the notorious case of *Planned Parenthood v. Casey*, in which the Court reaffirmed the constitutional status of the right to abortion.

In *Casey*, Justice Kennedy angrily condemned state-based disagreement with the original abortion decision, *Roe v. Wade*, which is certainly one of the most questionable constitutional decisions in American history. Kennedy went so far as to claim that the objective of *Roe* had been to

end political conflict on the abortion issue. Accordingly, ongoing contention over the right to abortion was, he wrote, incompatible with "the character of a nation of people who aspire to live according to the rule of law." Thus the tenuousness of the federal judiciary's claim of legal authority over abortion policy—a claim that Justice Byron White had once described as "an exercise of raw judicial power"—made state-based disagreement seem an intolerable threat to national unity.

These considerations suggest that Justice Kennedy must be finding the same-sex marriage issue deeply vexing. Having been accused by Justice Antonin Scalia, among others, of abandoning law to take sides in the culture wars, Kennedy presumably understands that his previous opinions in favor of gay rights are, like the initial abortion ruling, vulnerable to charges of illegitimate overreach. Perversely, however, this intellectual tenuousness might well produce in Kennedy a sense that national unity is being dangerously undermined by those who disagree with his pronouncements on gay rights, not to mention by those who are battling the many lower federal court rulings

invalidating traditional marriage laws.

Nevertheless, the politics of abortion and same-sex marriage are different in important ways. While the moral and political divide over abortion seemed unbridgeable to Kennedy, public opinion appears to be shifting inexorably in favor of gay rights and same-sex marriage. The opponents, if viewed as a vanishing faction, are harder to characterize as dangerous threats to national unity or the rule of law. Moreover, as their numbers diminish, traditionalists' arguments might seem to Kennedy to be a fairly harmless and quaint religious relic rather than an expression of hatred.

Because of these diminishing numbers, however, the moral positions of marriage traditionalists may be harder to understand or credit. What, except prejudice and ill-will, could possess these holdouts against a benign tidal wave of acceptance and inclusiveness?

So pity Justice Anthony Kennedy. Given his judicial record, he is beset by many uncertain and conflicting questions, none of which can be resolved by resort to conventional legal materials. It will be a shame if he deprives the rest of us of a meaningful opportunity to consider these same questions. ♦

I Still Blame the Communists

What explains the years of rage on campuses?

BY JOSEPH BOTTUM

Maybe American higher education was never all that serious about, you know, the education portion of its name. After more than a decade of teaching in the Ivy League, the philosopher George Santayana dubbed Harvard and Yale the nation's toy Athens and

toy Sparta. He actually meant it as a compliment—as much a compliment, anyway, as he could muster. Santayana resigned his Harvard professorship in 1912 and moved to Europe.

But something especially odd does seem to be happening on American campuses these days. I confess to a little schadenfreude about the widely reported situation of Laura Kipnis, the Northwestern University

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professor whose feminist essay in praise of faculty-student dating prompted her school to investigate her for violations of the antidiscrimination provisions of Title IX. Kipnis is a widely published controversialist, and over the years she fanned the feminist flames that have now tried to burn her. The revolution, as the old story goes, devours its children.

Still, from symbolic mattresses and op-eds against Ovid at Columbia, to students interrogated about their Jewishness at UCLA and Stanford, to the stories of lawsuits filed by the undergraduates accused by their colleges of rape, to the reports of the Boston University teacher who used her Twitter account for anti-white-male messages, to the creation of “safe spaces” lest a public lecture trigger a bad memory in someone, to . . . On and on it seems to go, each fresh day bringing some fresh account of militant outrage at American colleges. “Only the dead have seen the end of war,” Santayana once warned us. Certainly only the dead have seen the end of campus upset.

It wasn’t always thus. I’m not thinking of some supposedly idyllic moment in the 1840s, or the 1910s, or the 1950s. I mean that 20 years ago, in the mid-1990s, at least a small sense of relief was felt by a number of people. Back in 1987, Allan Bloom had out-Santayana’d Santayana with his bestselling lament, *The Closing of the American Mind*. In the early 1990s Roger Kimball and Dinesh D’Souza added widely read books on the radicalism of college faculty—even as the collapse of Soviet communism from 1989 to 1991 deflated the hopes of the Marxist professors they wrote about.

It all seemed to add up to a slow but real generational retreat from an academic world still dominated by its proud memories of 1960s student protests. I remember the Harvard

Law professor Mary Ann Glendon explaining, around 1996, that she suspected the peak of political correctness had passed—since schools like Harvard and Princeton would feel embarrassed if they didn’t have one person on the faculty they could point to as a conservative. Not more than one, perhaps, but nonetheless, it seemed to mark a change that she imagined would soon filter from the Ivy League out into the rest of America’s schools. The poet Dana Gioia proposed something similar around that time, after he’d been



approached by a major foundation for names of conservative authors it might support in order to blunt the charge of its being merely a subsidiary of liberalism.

But by the time of the protests against the invasion of Iraq, any sense of institutional movement toward the middle was entirely gone. I gave a college reading on a poetry panel in those days, only to be asked, as the first question from the audience, how I could pretend to be interested in literature when I worked among people who supported the Iraq war. In street protests and marches on campuses—in the re-revolt of the intelligentsia—those years of 2002 and 2003 saw the left roar back to full re-creation of what it imagined the 1960s had been like. The rightness of one’s politics was again the measure of the rightness of one’s mind.

In the 12 years since, the politicizing of education has only grown, increasing its intensity with every victory won. No American faculty is embarrassed by its lack of nonleftist viewpoints; some are outraged by the presence of the few conservatives who remain. And *conservative* has proved a rolling term, where present dogma discovers oppressive heresy in what were the conventional liberal positions of only a few years before.

It’s possible to ascribe the situation to the presidential elections of 2008 and 2012. The guidelines for Title IX issued by the Obama administration have shifted power to the outraged, and everyone seems to know it. Laura Kipnis herself has written of the “collective terror” of faculty members who realize that a single student accusation of “triggering” can destroy their careers. But to blame Washington’s current crop of civil rights administrators is to put effect before cause. The activists-turned-bureaucrats could write their paradigm-changing “Dear Colleague” letters, without any gesture toward the middle, because they felt their views had finally triumphed, both politically and culturally.

In the same way, the president’s election and reelection may have caused the turn from outrage about foreign affairs to outrage about campus culture, since President Obama has been mostly exempt from left-leaning protests of his foreign policy. All the riled-up campus energy had to go somewhere, and the current generation of radicalized students discovered a channel down which it could flow: If we can’t protest war anymore, we’ll protest rape and racism. But again that gets the chronology backward. An angry radicalism was already present at American colleges, looking for its occasions and in no mood to accept any compromise.

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The reaction to Bill Clinton's sex scandals, leading to his impeachment in 1998, may have been the first hint of a new choosing of sides, followed by an abiding anger over the outcome of *Bush v. Gore* in 2000. But the fate of the Democrats is not quite the same thing as the fate of radicalism, and to find the real springs of what is now washing over the nation's schools, you have to go back, I think, to the fall of the Iron Curtain, 26 years ago.

Soviet communism provided a horizon for the hard left. An income stream and genuine prestige, too, but most of all a claim of the economic rightness of pure socialism, however imperfectly present in Russia. And the collapse of the USSR set everyone back on their heels for a moment. Marxism no longer seemed inevitable. Communism no longer appeared possible. Socialism no longer looked true. The fresh air of compromise in the middle 1990s, however thin it was and however quickly it would blow away, came from the sense that radicalism no longer had an eschaton—no longer had a model or a goal toward which to aim.

By the mid-2000s, however, radicalism had more or less accepted the failure of its economic programs, turning instead entirely to culture. The move begun in the 1960s was completed 40 years later: The Marxism of money became the Marxism of manners. The absence of an endgame didn't hinder all-day permanent outrage. It set outrage free. No one feels responsible for the academic world being created by our current campus fervors, because no one intends any particular creation. Destruction is its own end, now. Change, as they demand—with a shrug when asked, *Change to what?*

Probably the most-quoted line from George Santayana is his quip about how “Those who cannot remember the past are condemned to repeat it.” But I've always preferred another observation. “When change is absolute there remains no being to improve and no direction is set for possible improvement,” he wrote, “and when experience is not retained, as among savages, infancy is perpetual.” ♦

Remembering the Constitution

Senator Mike Lee thinks we've forgotten some important parts. BY TERRY EASTLAND

In his new book on the Constitution, Senator Mike Lee, the first-term Utah Republican, recalls his decision to run for the upper chamber in 2010. “It bothered me that even in the Republican Party, far too many elected officials have been reluctant to engage the public in a meaningful constitutional discourse . . . one that attempts to identify limits on federal power and extends beyond a facile assessment of how likely the courts might be to invalidate a particular law.”

Our Lost Constitution: The Willful Subversion of America's Founding Document is Lee's effort to engage the public in such “a national conversation,” as he also calls it. The book arrives as another election year draws near—a time when the public, or at least the likely-to-vote public, becomes more attentive to the choices ahead.

The book's title refers to five “lost” or “forgotten” provisions whose principles Lee wants to see “restored” through litigation and legislation, among other means. There are other lost provisions “I could have chosen to address,” the senator says in an interview, adding that he picked the ones he did on account of the compelling stories they involve. Those stories—Lee says he took “dramatic license” in telling some of them—are meant to convey the elemental role the American people have played in making the Constitution and governing themselves under it.

Lee quotes Alexander Hamilton's famous remark in the New York ratification fight: “Here, sir, the people govern.” Those five words, Lee

exhorts readers, “capture the reason why the Lost Constitution will never be a lost cause. In the United States the people always ultimately have the power to rein in, redirect, or kick out their elected representatives. They need only marshal the political will to do so.”

Lee's five lost provisions are a diverse group: the legislative vesting clause, which begins Article I, and the obscure origination clause, also in that article, as well as the First Amendment's establishment clause, the Fourth Amendment's ban on unreasonable searches and seizures, and the Tenth Amendment.

In his discussion of the Fourth Amendment, Lee tells the story of the English parliamentarian John Wilkes, who successfully challenged general warrants—those that “fail to name the person, place, or things to be searched or seized or that fail to show that here is probable cause to believe that the named target of search or seizure has committed a crime.” In America, Wilkes's story was well known and admired—think of Wilkes-Barre and other places named after him—and it inspired the Fourth Amendment. But, Lee argues, the amendment's ban on unreasonable searches and seizures has been compromised by interpretations of the Patriot Act authorizing the National Security Administration to obtain “the information-age equivalent of a general warrant, enabling government agents to search through the phone records of hundreds of millions of innocent Americans.”

Lee thinks the bulk collection effort violates the “core interests” of the Fourth Amendment. That has been a minority view among Senate

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Republicans, but last week the Senate joined the House in voting to end the practice. Lee sees a marshaling of political will going on, such that what was lost has now been restored. “This reflects,” he told me, “how voters are feeling. . . . They’re just uncomfortable with the idea of government telling telephone companies to send us all of your records.”

The establishment clause states, “Congress shall make no law respecting an establishment of religion,” and Lee tells the story of its origins, highlighting the contributions of John Adams and James Madison. They agreed that “government establishes a religion only when it declares a particular denomination to be the religion of the state.” Importantly, the clause was also understood to apply “only to the federal government”—and not to the states. As for how the clause was lost, Lee says that a string of Supreme Court decisions starting with the 1947 case of *Everson v. Board of Education*, “one of the most transparently misleading and historically inaccurate opinions in Supreme Court history,” did the deed. Lee quotes Justice Potter Stewart, writing in 1963 in one of the public-school prayer cases: “It is not without irony that a constitutional provision evidently designed to leave the States free to go their own way should now have become a restriction upon their autonomy.”

Lee doesn’t propose a way to restore this lost provision. Asked about it, he says that “it’s important for people” to see “that if you dropped someone in from the founding era and they saw what was happening under the establishment clause, they’d be stunned.” For Lee, the establishment clause may function as a reminder of just how badly lost a constitutional provision can become.

The origination clause provides that “all Bills for raising Revenue shall originate in the House of Representatives, but the Senate may propose or concur with Amendments on other Bills.” Lee tells the story of how the clause saved the Constitution, helping overcome, thanks to the work of Benjamin Franklin, the storied impasse between

large and small states. The origination clause, Lee writes, ensured that “taxation would originate only in the house most representative of, and accountable to, the people”; it was a restraint upon the Senate. But in the twentieth century the Senate’s amendment power came to be seen as so broad as to permit the upper chamber to strike and replace

The vesting clause has been transformed in the 80 years since the rise of the administrative state. Writes Lee: ‘The clause has become so distorted by successive Supreme Courts, Congresses, and power-hungry presidents that most laws are now written and promulgated by executive agencies, not by Congress.’



Mike Lee

the entire text of a bill that technically originates in the House.

That is what the Senate did in legislating Obamacare. HR 3590 modified a number of tax-credit, tax-penalty, and estimated-tax provisions of the Internal Revenue Code. In the Senate, the entire text of that House resolution was deleted and replaced with provisions that became the Affordable Care Act.

Lee’s concern is that in instances in which the clause is lost, the discipline it can bring to lawmaking, particularly with respect to raising revenue, is also lost, with more invasive and

more costly government the result. Here again Lee does not offer a restoration plan. But in our interview he said he’ll be “thrilled” if lawsuits challenging the ACA as a violation of the origination clause (two, in different circuits) succeed. Lee, however, is realistic enough to know that the controversy may not be decided by the courts—for lack of standing, he told me, or because it is deemed “a political question” and thus not one for judges to decide. The issue, he says, may be one that the two houses will have to address. Here Lee, so sharply critical of Congress for its constitutional failings, takes a hopeful view.

The remaining lost provisions are the legislative vesting clause: “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.” And the Tenth Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.”

The vesting clause has been transformed in the 80 years since the rise of the administrative state. Writes Lee: “The clause has become so distorted by successive Supreme Courts, Congresses, and power-hungry presidents that most laws are now written and promulgated by executive agencies, not by Congress.” As Lee explains: Congress passes a law purporting to solve a genuine problem but provides no specific solutions. To implement the legislation, Congress delegates to executive agencies the power to make legally binding rules—i.e., regulations. The executive branch then effectively writes the law that it enforces—in violation of the separation of powers, Lee says. Congress gets the credit for solving a problem and none of the blame for problems the regulations create. Lee calculates that only about 1 percent of the rules we must live by are legitimately enacted by Congress.

Lee observes that few members of the Supreme Court have expressed a willingness to reconsider the precedents that permit almost unlimited delegation to executive agencies. He’s

skeptical about the Court's ability to improve the situation. Here he looks to Congress, and he has a specific recommendation—the aptly titled Regulations from the Executive in Need of Scrutiny Act. The REINS Act would treat all new major regulations as “legislative proposals that could take effect,” Lee writes, “*only if enacted into law by Congress.*” Congress would be made accountable for exercises of the power it so often delegates.

Because Lee advises GOP presidential hopefuls on constitutional matters, I asked him what else he would do if he were president to restore congressional authority and responsibility. “I’d back up my support for the REINS Act by vetoing legislation that I believe amounts to an undue delegation of authority by Congress to the executive branch bureaucracies.”

As for the Tenth Amendment, Lee writes that Congress long respected the limits on its powers that the measure embodied. But starting with the New Deal, things changed. Under

the commerce clause, Congress has “the power to regulate commerce . . . among the several States.” On the new understanding that “almost everything” affects “commerce,” the power to regulate commerce was “inflated,” as Lee puts it. When Congress could regulate virtually everything, the Tenth Amendment became a nullity.

In the 2012 case of *NFIB v. Sebelius*, which challenged the constitutionality of the individual mandate in the Affordable Care Act, the Supreme Court seemed to restore a bit of the Tenth Amendment by somewhat deflating the commerce clause. A five-justice majority said that Congress couldn’t compel commerce; people couldn’t be ordered to buy health insurance. Yet this apparent victory for the Constitution and limited government was undone, Lee says, when one of the five, Chief Justice John Roberts, found the mandate permissible after all, a legitimate exercise of Congress’s enumerated power “to lay and collect taxes.”

If Lee were president, he would, he told me, veto a bill if it “exceeded Congress’s proper authority.” He would do that “regardless of whether I thought the Supreme Court would uphold it or not.” Here Lee is saying that a president need not adhere to the Court’s jurisprudence on a particular matter. “I’d have my own test and outline what that test was.”

Lee came to Congress in 2011 having run as a constitutional conservative. He has since acquired a reputation as a reform conservative, defined as a conservative seeking policy changes that, as Lee has said, “help the poor get out of poverty and . . . expand the middle class.” To those who think constitutional conservatism and reform conservatism are in tension, Lee says, “They are parts of the same whole,” explaining that a government of limited powers “can help restore economic mobility.” Lee has a large agenda, distinctive for its pursuit of constitutional self-government and likely to shape his party’s politics in the 2016 elections. ♦

Small Business Success Powers Our Economy

By Thomas J. Donohue

President and CEO
U.S. Chamber of Commerce

Research by analysts at Gallup uncovers some troubling trends about entrepreneurship in America. For the first time in 35 years, more American businesses are being shuttered than started. The United States has slipped to 12th place among developed nations for business creation.

Despite the grim statistics, many U.S. small businesses of every kind—from scrappy startups to multigenerational Main Street fixtures—manage to overcome obstacles and long odds to survive and thrive in a challenging environment. They push back against headwinds like higher taxes, stricter regulations, and greater uncertainty and emerge stronger than ever—putting people to work and making positive contributions to their communities. But if Washington continues to get in the way, that will spell real trouble for our economy.

Now, more than ever, it is crucial that

we build on their successes and reverse the trend of declining startups by taking steps to foster a culture of entrepreneurship.

First, we must preserve the right to take risks. Virtually all successful businesspeople have taken a reasonable risk at some point, and many failed along the way but kept trying. If we eliminate the right to take risks, then we’ll extinguish the entrepreneurial spirit of our country. America has never been about playing it safe.

Second, we can fight for the right policies in Washington. The government should be *helping* businesses, not *interfering*. They should be creating the right conditions for businesses to prosper. The U.S. Chamber is pushing our lawmakers to keep taxes low, regulations reasonable, foreign markets open, roads and bridges adequately funded, and students well educated.

Third, we must protect the right of business to participate in the policy and political processes. At a time when Washington is increasingly involved in the affairs of business, there is a movement

seeking to silence the voice of business in the debate. All Americans should be able to voice their opinions, even unpopular ones, in the public sphere and petition the government without fear, intimidation, or undue regulation.

Finally, we must celebrate the success of America’s small businesses—we need it! Successful businesses drive stronger economic growth and create more jobs. They keep the American Dream alive and perpetuate our free enterprise system. The Chamber will shine a spotlight on the many contributions of small businesses when it welcomes owners and entrepreneurs from across the country to Washington for America’s Small Business Summit this week.

Together we can foster a culture of entrepreneurship that will help our country regain its competitive edge and enable more businesses to strive for—and achieve—the success that powers our economy.



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The Coming Democratic Panic

Watch what happens if Hillary Clinton falls behind in the polls. **BY FRED BARNES**



But it's my turn! MY turn!

When a CNN poll last week showed Hillary Clinton leading Rand Paul by a single percentage point (48-47) and only three points ahead of Marco Rubio (49-46) and Scott Walker (49-46), it was mildly shocking. In April, her lead over the three Republican presidential candidates had been in double digits: Paul (58-39), Rubio (55-41), and Walker (59-37).

But wait. If the next CNN survey shows Clinton actually behind one or two or three of the GOP candidates, it won't be just shocking. It will send Democrats into a near-panic over the possibility of losing the White House in 2016, even with their preferred candidate, Clinton, as nominee.

Such a poll result isn't far-fetched as we watch Clinton's campaign deteriorate. True, head-to-head matchups

this early in the presidential cycle are almost never predictive. But in this case, it's the psychological impact that matters.

That Clinton's candidacy is in trouble is indisputable. She's not threatened with losing the Democratic nomination—at least not yet. She has the well-financed Clinton machine and a national network of supporters on which she can rely. The campaigns of her Democratic opponents are small and weak in comparison.

But the rationale for her bid for the presidency, the strategy of her campaign, and the tactics she's adopted—all have failed to stop her steady decline. The expectation of Clinton's glide into the White House in 2016 is gone.

What is the rationale for her candidacy? President Obama had a big one in 2008. He would reform Washington, end polarization, promote bipartisanship, and bring about change. As

a campaign message, it was appealing. As we now know, his real intentions were different. But Obama had a rationale for seeking the presidency. Clinton doesn't.

In place of a rationale, there's an assumption that her prominence, her résumé, and the likelihood of her becoming the first woman president would make her a uniquely appealing candidate. They haven't. She's a terrible candidate. She has not only failed to attract big crowds. She's having trouble raising big money from those described by *Politico* as "rich liberals."

The old adage that opposites attract may apply in her marriage. Bill Clinton is charming, has wonderful political instincts, is a compelling speaker, and has a common touch. She lacks all four. Also, Bill is dynamic. She is lifeless as a candidate.

In early May, she published a piece in the *Des Moines Register*. It was uninspired. "Because this campaign isn't going to be about me, it's going to be about Iowans and people across our country who are ready for a better future," she wrote. Not about her? Please.

Despite three previous campaigns—two Senate, one presidential—Clinton seems ill at ease as a candidate. Presidential candidates are usually better the second time they run. She's worse. Unexpected adversity may cause her to become a tougher and more sure-footed candidate. So far, it hasn't.

Clinton's troubles tend to be self-inflicted. It was her decision to operate her own email system while she was secretary of state for four years. It was her and her husband's decision to mingle her State Department decisions, his high-priced speeches, and the Clinton Foundation in a suspicious fashion.

When those deeds became public, Clinton responded as she and her husband have in the past. She's adopted a full stonewall, refusing to answer the questions of reporters covering her campaign. The idea behind this tactic is that time will kill the media's interest in subjects the Clintons don't want to discuss. It hasn't worked.

On the emails, the State Department sought to help its ex-secretary. It

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was slow-walking the review and subsequent release of the emails—those she hadn't selectively deleted. But a federal judge ordered a batch of her emails to be made public each month. This won't help her campaign.

Nor has the issue of the Clintons and their foundation dried up. On the contrary, fresh instances of dubious conduct—arguably unethical or greedy or both—by the Clintons continue to come to light. The latest involves \$750,000 paid for a Bill Clinton speech by a Swedish company followed by Sweden's absolution of the company for violating trade sanctions against Iran.

Stonewalls can work, but not forever and not in the midst of a presidential campaign. A minimal requirement of candidates is that they converse with the press. It looks bad when they don't. It looks like they're hiding something.

There's one more problem of Clinton's doing: her mad dash to embrace the left wing of the Democratic party. After being paid hundreds of millions for speeches to Wall Street firms, she now says the very wealthy in America must be "toppled." She promises to legalize more illegal immigrants than the five million Obama has. And so on.

Given all this, two more problems have dropped in the lap of Clinton's campaign. One is the increased attention her Democratic opponents are getting. Democratic voters are suddenly interested in hearing their pitches. And former New York City mayor Mike Bloomberg has popped up as a possible entrant in the Democratic race against Clinton.

That's the least of her worries at the moment. Her bigger problem is trust. The CNN poll asked if Clinton is "honest and trustworthy," and 57 percent said no. A *Washington Post*-ABC News poll asked the same question, and 52 percent said no.

Matchups against other presidential candidates are evanescent. Voters change their minds repeatedly at this stage. But a personal judgment of a candidate's basic honesty is not a fleeting opinion. It cuts more deeply. And reversing a negative judgment doesn't happen overnight. It can doom a candidate and sometimes does. ♦

Every Man a Political Donor

A revolutionary campaign finance idea.

BY JAY COST

Writing recently in the *Daily Beast*, John Pudner of Take Back Our Republic, a conservative reform group, offered an interesting proposal for improving our campaign finance system. He suggested that each political donor receive a tax credit worth up to \$200:

If our ultimate goal is to restore citizens' faith in their government, shouldn't we also do what we can to make it easier for those same citizens to give a small contribution to the candidates of their choice? Citizens who write the small checks tend also to start talking to their friends, go knock on doors, or share information via social media. And when citizens get involved, the outcomes are better.

The nonpartisan group Represent. Us has endorsed a similar tax credit, which is worth considering. It might be a way to reduce the bad effects of money in politics without trampling on the First Amendment or doubling down on the failed campaign finance reforms of the last century.

Campaign finance has been a problem since the initiation of party politics. When Thomas Jefferson and James Madison resolved to oppose the Washington administration, they enlisted poet Philip Freneau to publish the *National Gazette*. Jefferson financed Freneau's operation by securing him a job at the State Department. Surely there is no better illustration of the ethical problems inherent in campaign finance: Freneau was hired by President Washington's secretary

of state for the express purpose of attacking the Washington administration, all on the taxpayer's dime!

Party politics was firmly entrenched by the 1830s, and parties had to find a way to fund their efforts. So they expanded upon and systematized the relationship between Jefferson and Freneau. Thus was born the patronage regime, which governed campaign finance from the 1830s until the 1880s. Patronage, aka the spoils system, was essentially public financing of campaigns, with party bosses directing government largesse to their most active supporters.

The griminess of 19th-century patronage offends modern sensibilities, but it was a solution to a real problem the political class faced—a Gilded Age prisoner's dilemma. As George Washington Plunkitt of Tammany Hall once asked:

How are you goin' to interest our young men in their country if you have no offices to give them when they work for their party? ... It can't be done. ... They say: "What's the use of workin' for your country anyhow? There's nothin' in the game."

Behind Plunkitt's bombast and exaggeration is a legitimate point. By the middle of the 19th century, electoral politics was an expensive affair. The presidential election of 1860 already spanned the continent, requiring the concerted efforts of thousands of far-flung campaign operatives. Yet only Abraham Lincoln (who, incidentally, did not himself campaign) got to take the oath of office. How to motivate people to contribute? The answer: patronage. By winning the election, Lincoln acquired the

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authority to dispense jobs, contracts, and grants to his loyal supporters.

The patronage regime was a breeding ground for inefficiency and graft, and it was outlawed at the federal level in 1883 by the Pendleton Civil Service Reform Act. Yet the laws of political economy cannot be repealed, so politicians had to find another way to deal with the dilemma that Plunkitt described so colorfully.

Thus was born the modern system, which in many respects is worse than the patronage system it replaced. Today, parties and candidates, especially in Congress, depend heavily on private individuals to fund their political operations. While many political contributions are public-spirited, many more are self-interested. Therein lies the problem. In exchange for campaign contributions and other benefits, politicians write laws to benefit their donors.

Usually, the quid pro quo is not explicit; otherwise, the Department of Justice swoops in to indict the participants, as it did recently with New Jersey senator Bob Menendez. But political scientists and policy experts have noticed an unmistakable pattern over the years: Campaign contributions, lobbying, and the general lavishing of resources on members of Congress do influence policy-making, often to a remarkable degree. On the federal level, the locus of this systematic conflict of interest is the congressional committee system. Committees have extraordinary authority over their policy domains, and special interests direct their contributions accordingly. The range of policies up for sale is breathtaking. From Medicare to taxes to farm subsidies to housing to infrastructure and more, policy is designed to benefit the highest bidders.

This is an embarrassment to our republic. Occasionally, some

outrageous scandal manages to shame even our impudent Congress, which hastily passes some campaign finance “reform” to deflect public outrage. In those instances, legislators repeat the mistake of Pendleton: They outlaw certain financing practices without providing alternative ways to raise funds. Thus, progressives outlawed business contributions with the Tillman Act of 1907; many businesses ignored it, and presidents enforced it poorly. Conservatives outlawed labor contributions with the Taft-Hartley

Court invalidated swaths of it on First Amendment grounds.

The verdict of a century’s worth of failed reform is that it is not enough to limit the flow of money. Campaign finance, after all, is essential to democratic politics. Money in politics is like water flowing downhill. It cannot be stopped; rather, it must be redirected in a socially beneficial way.

This is why Pudner’s idea is so intriguing. It would not reform campaign finance by restricting political giving, even by those looking for a quid pro quo; it would impose no new limits on political giving. Instead, it would try to overwhelm shady transactions by subsidizing public-spirited giving. Even a small tax credit, something on the order of \$200 per return, could go a long way. According to Pudner, there were on average 10,000 small donors per congressional district in the last cycle. If each gave \$200 in tax-refundable political contributions, that would total \$2 million per district. Most campaigns for federal office cost a lot more than this, but it would be a great start. And who is to say that a tax refund would not encourage more political giving? According to the Tax Policy Foundation, about 100 million tax

returns were filed in 2013 by those who paid taxes. If a tax credit enticed just a tenth of these filers to contribute \$200 to politics for the first time, it would generate \$2 billion in campaign contributions. That could significantly reduce the influence of special interest money.

Such a tax credit would be a novel twist on some old ideas. It could be the foundation of a privately directed system of public finance. Millions of citizens could use the credit to support parties, candidates, and causes they believed in. After more than a century of bad campaign finance laws, it is worth a shot. ♦



Never short of friends

Act of 1947; labor responded by creating the first political action committee (PAC), an artifice to circumvent the law. When a federal court ruled that labor’s PAC was illegal, the unions leaned on Congress to pass the Federal Elections Campaign Act (FECA) of 1971, with various amendments to follow in the course of the decade. In total, FECA eliminated whatever limits Tillman and Taft-Hartley had maintained; business and labor PACs proliferated, while interest groups found all sorts of workarounds to the restrictions that it imposed. Most recently, the Bipartisan Campaign Reform Act of 2002 was so draconian that the Supreme

The Currency of Commerce

Free trade needs sound money.

BY JUDY SHELTON

Now that the Senate has approved legislation that would give President Barack Obama authority to complete a trade partnership agreement with Japan and 10 other Pacific nations later this year, the bill moves to the House for further debate. Its ultimate fate is in question, however—not only because it pits fervent free trade advocates against leery protectionists, but because it ignores the impact of currency movements on the prices of imports and exports.

Many lawmakers were caught off-guard when the issue of “currency manipulation” rose to the top of concerns over proceeding toward a major trade agreement that will govern America’s relationship with a region encompassing almost 800 million people and roughly 40 percent of the world economy. China, the world’s second-largest economy, is excluded from the envisioned Trans-Pacific Partnership for now. But the fact that China might join at some future date is fueling an increasingly rancorous debate over the question: Should governments be allowed to manipulate the value of their currencies in foreign exchange markets to achieve a trade advantage?

The answer is no. When currencies misrepresent the true value of goods and services, it skews the benefits of free trade and undermines the principles of free-market competition.

But we shouldn’t reject a historic opportunity to move toward an open

global economy for lack of coherent monetary arrangements; we shouldn’t throw the baby out with the bathwater, so to speak—where the bathwater is the dirty float of the world’s current exchange-rate swamp. Instead, we should take this opportunity to begin discussing how to build a rules-based international monetary system to foster productive economic growth for a community of nations still reeling from the last global financial crisis.



Strong feelings in Kuala Lumpur, April 27, 2014

Indeed, it’s surprising that it has taken this long to elevate currency misalignments over tariffs as the chief culprit in sully the virtues of free trade. Who cares about tariffs, which are mostly in the single digits, when a shifting exchange rate can utterly transform the dynamics of price competition? Japan, for example, imposes an average tariff of 4.7 percent on imported goods, but the value of the yen to the dollar has been cut in half over the past three years—effectively boosting the price of goods imported from the United States by some 50 percent while slashing the price of Japanese exports in U.S. markets.

No wonder Republican senator Rob Portman of Ohio and Democratic senator Debbie Stabenow of Michigan

forged a bipartisan effort to attach an amendment to last month’s trade authority legislation that would seek enforceable currency rules as part of any future trade agreements. (It failed in a close vote of 48 to 51.) Automotive workers in their respective states deserve to compete in foreign markets without having the price of U.S. cars jacked up purely through currency effects. Nor is it fair that cars produced in countries that cheapen their currency appear more “competitively” priced in U.S. markets.

Currency devaluation is not competing—it’s cheating.

Which is why the time has come to develop a comprehensive approach to international monetary reform compatible with genuine free trade under free-market conditions. If markets are to function properly, money needs to convey accurate price signals; that won’t happen as long as governments can manipulate exchange rates.

It’s hardly a new concept. When the vision of a peaceful and prosperous postwar world was presented to delegates at Bretton Woods, New Hampshire, in July 1944, it came with certain ground rules. Goods and services could be freely traded among participating nations, investment capital would be allowed to flow to its most productive use, the disruptive effects of financial instability and capital flight would be avoided—so long as a level playing field was maintained through fixed exchange rates. Deliberate “beggar-thy-neighbor” devaluations would not be allowed. Participating nations agreed to fix their currencies to the U.S. dollar, and the dollar was fixed to gold.

The International Monetary Fund was established to oversee this new international monetary order and to ensure its continued viability—a responsibility that was upended in August 1971, when President Nixon suspended the dollar-gold link.

Into the vacuum of a dismantled currency system came the theory of floating exchange rates, propounded by economist Milton Friedman, which posited that a “free-market”

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approach would allow the forces of supply and demand to determine the appropriate exchange rate among currencies. What Friedman didn't anticipate—and would later bemoan—was that governments would intervene massively in foreign exchange markets to strategically position their own currencies and thus confound the process for achieving a market-determined exchange rate.

Today the IMF not only permits but openly endorses a do-your-own-thing approach to international monetary relations, instructing member countries that they are “free to choose any form of exchange arrangement they wish”—with the exception, perversely, of being permitted to peg their currencies to gold.

Ironically, the person who may have best summed up the conundrum of today's monetary disorder is Jacques de Larosière, who served as IMF managing director from 1978 to 1987. Speaking at a Vienna conference in February 2014, he lamented the “volatility, persistent imbalances, disorderly capital movements, currency misalignments, and eventually currency wars and capital controls” resulting from our existing currency mishmash. Far worse than a non-system, according to Larosière, it amounts to an “anti-system.”

Can the legitimate need for an ethical and orderly monetary system be reconciled with the Trans-Pacific Partnership—without scuttling the latter? A watered-down amendment on currency manipulation that merely authorizes selective enforcement against targeted countries would only further compromise the ideal of an open global marketplace. And protocols that require trying to discern the intent behind central bank decisions that debase a currency—as if monetary policy decisions can be separated from their exchange-rate consequences—is likely to provoke more cynicism than clarity.

It's time to begin thinking on a grander scale. We need to evoke the rationality and the resolve of Bretton Woods if we are to meaningfully preserve America's commitment to free trade. ♦

Macedonia Mischief

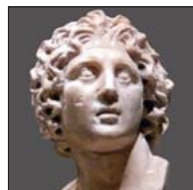
Nothing good ever came from rivalry and hatred.

BY STEPHEN SCHWARTZ

Skopje

In *Homage to Catalonia*, George Orwell described, on his return to Barcelona after serving in the front lines of the Spanish Civil War, “an unmistakable and horrible feeling of political rivalry and hatred” in the Catalan capital. During a late-May visit to Skopje, capital of the independent Republic of Macedonia, something similar was in the air.

In April and May, Macedonia was in upheaval. Forty armed men raided a police station in Gošince, on the border with Kosovo, April 21. That event was blamed on a marginal group calling itself the National



Blame Alexander

Liberation Army, organized from among Macedonia's Albanian minority. On May 8, in the northern city of Kumanovo, an outbreak of fighting left 8 police officers and 14 rebels dead. Macedonian authorities arrested 30 in the affair—18 from Kosovo, 2 Macedonian Albanians living in Kosovo, 9 citizens of Macedonia, and 1 Albanian citizen living in Germany.

The complex nature of the Republic of Macedonia makes the convolutions of the Spanish Civil War look simple by comparison. The country is often called the Former Yugoslav Republic of Macedonia (FYROM) because Greece asserts that the name “Macedonia” can only be applied to the territory Athens governs south of the previous Yugoslav-Greek frontier. Although their common border is extensive, Greece boycotts Macedonia.

The Republic of Macedonia replies to this gesture of contempt by claiming Alexander the Great, who came from ancient Macedonia and lived in

the fourth century B.C., as its historical ancestor—notwithstanding the fact that most present-day citizens of the Republic of Macedonia are Slavs whose forebears did not appear in the region until at least the sixth century A.D. Alexander the Great was definitely not a Slav.

Neither are a large minority of the citizens of independent Macedonia.

While the population is estimated at 2 million, no census figures have been released since 2002, when Slavs made up 64 percent, Albanians 25 percent, and others (Turks, Roma, Serbs, and unspecified) 11 percent. Albanians claim their share

is closer to half.

Slav Macedonians are mainly Orthodox Christians, though some are Muslims. Macedonian Albanians are mostly Muslims, with significant Catholic and Orthodox minorities. Mother Teresa was an Albanian Catholic born in Skopje, although the Slav authorities try to claim her along with Alexander.

The mischief in Macedonia is mysterious. The recent outbreaks of violence occurred under the government of Nikola Gruevski, leader of a formerly leftist, now ultranationalist party, the Internal Macedonian Revolutionary Organization-Democratic Party of Macedonian National Unity. Gruevski rules in tandem with a previously insurgent Albanian party, the Democratic Union for Integration.

Gruevski has faced a growing challenge since Zoran Zaev, the Slav leader of the opposition Social Democratic Union of Macedonia, an ex-Communist party, accused the prime minister of wiretapping tens of thousands of members of the country's political and intellectual elite—and released the transcripts. Gruevski had already

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been branded as profoundly corrupt.

Some veterans of the Kosovo Liberation Army (KLA) who are now affiliated with the militant nationalist Alliance for the Advancement of Kosovo (AAK) were involved in the Kumanovo clash. A KLA combatant and AAK representative, Xhafer Zymberi, was reported killed. The AAK, an opposition party in Kosovo, expressed its dismay at the Kumanovo incident. AAK leader Ramush Haradinaj fretted that Albanians throughout the Balkans had never been in a better position than now. "Albania is in NATO, Kosovo is independent, and Albanians in Macedonia have progressed," he told a Kosovo radio station on May 11.

Numerous Macedonians believe that Gruevski was responsible for the April and May bloodshed. His motive, they claim, was to divert attention from the popular discontent with his government. Blogger Ivana Jordanovska described the chaos on the night of May 8 as follows:

The police forces of Macedonia entered Divo Naselje, a neighborhood of . . . Kumanovo. According to official sources, the police had information about a terrorist group hiding in some of the houses in this ethnically mixed part of town that was planning to carry out attacks on state institutions. Throughout the night and following day, sounds of grenades and gunshots could be heard, while several buildings were burned and civilians evacuated. As I drove into the city from the airport, there was one thought I couldn't get rid of: Who would benefit from this crisis? . . . The narrative being spread made no sense. . . . The terrorists could not have expected support from the local Albanians.

Jordanovska noted that if, as the Macedonian police declared, foreign terrorists had infiltrated the country and engaged in a skirmish, "the government would have to declare a state of emergency. A state of emergency allows for special measures, such as introducing a curfew or revoking the right to protest. And what's been happening in Macedonia lately? Protests."

Mobilizations against Gruevski did not begin with the wiretapping controversy. His critics charged him with

fraud in last year's national elections. The anti-Gruevski forces have targeted, additionally, an unpopular education law, a new tax regulation, reform of secondary schools, the imprisonment of a journalist, and the death of a young female denied medical attention because of bureaucracy. But most crucially, a Gruevski supporter, Martin Neskosi, was beaten to death by state police after Gruevski's electoral victory in 2011. The wiretapped conversations released by Zaev include discussions of the Neskosi case by Gruevski and his closest cronies.

Bigger protest rallies began on May 5 and culminated on May 17. Thousands of Slav Macedonians, Albanians, and Macedonian Turks assembled to call for Gruevski's removal. The next day, a pro-Gruevski countereffort brought together Slav Macedonians and Serbs.

Officials loyal to Gruevski blamed the Kumanovo carnage on Kosovo. Kosovo leaders responded by calling for a "credible and transparent" investigation of the massacre. With the positive identification of 18 Kosovar Albanians involved in the assault, Kosovo police raided their homes in search of evidence.

In the Kosovo journal of record, *Koha Ditore* (*Daily Times*), the respected commentator Enver Robelli demanded to know "who are these people, these Albanians who gave themselves a mandate to fight?" Robelli called on Albanians in Macedonia to gain their legitimate rights while removing Albanian criminals from politics.

Alternating between fantastic conspiracy theories, Serbian sources claim that "the West" supports an attempt to create a "Greater Albania" uniting Albania proper, Kosovo, and Albanian ethnic areas of Macedonia, south Serbia, Montenegro, and Greece. Serbian president Tomislav Nikolic, during a visit to Italy, invoked this specter.

Meanwhile, a frenzied Serbian academic, Ljubodrag Dimic, argued that "Greater Albania" is an Islamic State (ISIS) project, supposedly aimed at holy war against Balkan Christians, with the purported complicity of Catholic Croatia.

Further, the Kumanovo tragedy

coincided with the indictment of 32 people by the Kosovo authorities for participation in and recruitment to ISIS forces in Syria and Iraq. Under a recent Kosovo law, anybody convicted of fighting abroad faces a prison sentence of up to 15 years.

Kosovo officials say more than 200 people from the republic have joined ISIS, with at least 40 already killed. Kosovo deputy foreign minister Petrit Selimi has specified that 50-60 are still serving the terrorist entity.

Dimic spun his fantasies to include an attempt to block a new Russian energy pipeline, the Turkish Stream, from passing through Macedonia. But with high mountains, that country would be impenetrable for such an engineering project. The Serbian "expert" even foresaw a Chinese scheme to build a high-speed railway that would link the Balkans to the Far East.

Chaos has been revived in the region, where the hand of Vladimir Putin is detected even beyond talk about the Turkish Stream pipeline. On May 15, Russian foreign minister Sergey Lavrov visited Belgrade, capital of Serbia, to support the gas pipeline project through Turkey, Greece, and Serbia, while "helping stabilize" Macedonia.

To anyone walking through Skopje, a city of at least half a million, the physical evidence of mischief is eloquent. The city has only a façade of modernity—in contrast with Pristina, the Kosovo capital, where economic progress is real. In Skopje, new bridges across the Vardar River, which formerly divided the Slav and Albanian districts, empty into giant plazas that have pushed Albanian shopkeepers and café owners further northeast. The city has been transformed in pseudo-Roman, neofascist style, with huge statues to the heroes of an invented history, beginning with Alexander. A Holocaust Museum has opened, although the members of the ancient Jewish community of Macedonia were handed over to the Nazis during World War II. But Slav Macedonia has a short memory: In the main square, stickers are for sale depicting Tito, Stalin, Mao, Castro, and Hitler. ♦

Attorneys at War

Inside an elite Israeli military law unit

BY WILLY STERN

Kiryat Military Base, Israel

For three straight days starting on July 15, 2014, the Israel Defense Forces (IDF) made thousands of phone calls to the residents of Shejaiya in northern Gaza. The locals were encouraged to evacuate their homes before IDF tanks rolled across the border. Tens of thousands of leaflets were dropped into the village. These leaflets suggested both a safe evacuation route and safe destinations to head for within Gaza City. The IDF sent similar messages daily via local television and radio. But that's not all. The IDF also made dozens of phone calls to Shejaiya's influential citizens, asking them to get out the word of the impending IDF incursion.

Thousands and thousands of warnings were given. The Israeli military authorities essentially told the enemy where the IDF troops would enter the village and when. And for three days, Hamas fighters, no dummies, took full advantage. They dug their own forces in deeper. They activated booby-traps. They hid IEDs. They got snipers into perfect positions. They brought in additional fighters. They prepositioned weapons. They readied their terror tunnels.

At this point, it was abundantly clear that IDF commanders had gone beyond any mandates that international law requires to avoid civilian casualties. No matter. Putting their own troops at even greater risk, IDF commanders decided to wait yet another day to allow more time for civilians to get out.

Then all hell broke loose. Shejaiya was the location of nasty urban fighting between Hamas and the IDF during the 2014 summer conflict. Sixty-seven Israeli soldiers would die in that war, and many of the injured are still in hospitals.

One who survived is Ben, a deft-thinking IDF attorney who grew up outside Sydney, Australia, swimming off Bondi Beach. Ben (IDF policy does not allow the use of some last names) is standing today on a hillside near the Israeli village of Mefalsim, looking some 500 yards across a verdant field into the Gaza strip. He's viewing a peaceful

scene—the very same Gazan town of Shejaiya. Ben ponders the \$64,000 question; namely, Does he think the IDF does too much to prevent civilian casualties? He stares into Gaza for a long time. A very long time. “Who knows? I can tell you that I am proud that we do what we do.”

What exactly is it that Ben and his colleagues do? Ben works in the IDF's international law department, essentially the best little niche law firm you've never heard of. These distinguished attorneys carry assault rifles, get shot at frequently, and sit at the cutting edge of the law of armed conflict. The unit goes by “Dabla,” the acronym for the Hebrew name of the international law department; Dabla, in turn, sits inside Israel's equivalent of the U.S. Army's Judge Advocate General's (JAG) Corps.

“Dabla is the Harvard Law School of the international legal community in Israel,” says Joel Singer, a partner at Sidley Austin in Washington, D.C., and a former head of this prestigious unit. “But it's more than that. Alumni of this unit go on to be the elite of the elite.” The Dabla attorneys are a remarkable, if under-recognized, breed of officers—extremely well educated and able to provide real-time advice on a range of international legal issues. Dabla has never lifted up its skirts and let a journalist peek inside the unit's decision-making operation before.

But to understand Dabla is to understand the insanity of the avalanche of criticism raining down on Israel for the way its military fights. Let's start by looking at two extraordinary documents.

The IDF uses the first document—called a “target card”—when commanders prepare strikes against enemy targets. During the Gaza conflict, such targets included a weapons cache hidden on the second floor of a densely populated four-story residential building, a command-and-control center located in a mosque, and a surveillance platform hidden inside a hospital.

The cards contain a wealth of information about the targets from the intelligence and operations units. Before any attack can go forward, Ben and his fellow IDF legal advisers have to sign off. That's when things get interesting. The lawyers must put their own check mark on the card—they call it a “tick”—indicating that it's a lawful target.

Back to the Gaza conflict. After IDF professionals—weapons experts, operational planners, and so on—and the

Willy Stern, an adjunct faculty member at Vanderbilt Law School, has written for THE WEEKLY STANDARD from Afghanistan, Iraq, Israel, Mali, and other places.



Weapons training in a residential neighborhood in Gaza

Dabla lawyers have all signed off on a target card, the strike is approved. As far as Dabla is concerned, anyway. The final decision rests with the commander.

Here are just some of the steps and warnings designed to prevent civilian casualties that might take place before missiles start flying: The IDF may, variously, gather detailed intelligence on who lives in the building; call or text those who reside in a particular building with a warning that a strike is coming; drop Arabic-language leaflets over the area warning residents; fly a drone with sophisticated surveillance cameras overhead, as an extra set of eyes to make sure the civilians have vacated; drop a small charge on the roof which shakes the building, as a final warning signal that a strike is coming; and employ a highly precise and carefully chosen weapon system which, IDF lawyers and commanders hope, would destroy only the weapons cache but not surrounding rooms.

Talk about signaling your intentions to the enemy. How can any military win a war when it decides to fight this way? No matter. That is how Israel chooses to fight. In an effort to go overboard to comply with the law of armed conflict, the IDF prepared and used more than 4,000 of these target cards for planned strikes during the 50-day Gaza conflict in July and August 2014. Ben and his Dabla colleagues put a tick on every one that met their standards.

But here's the kicker: Although most strikes were carried out without harm to innocent bystanders, IDF field

commanders nixed other approved strikes in Gaza, despite these multiple layers of precautions to prevent civilian casualties. Why? "There is no symmetry in international law," says Lt. Col. Robert Noyfield, the Dabla attorney in charge of targeting. "We do it out of moral obligation; we do it for ourselves. We are a democratic country that abides by the rule of law. By doing so, of course, we also hope to avoid criticism from the international community. How can we be faulted when abiding by the law?"

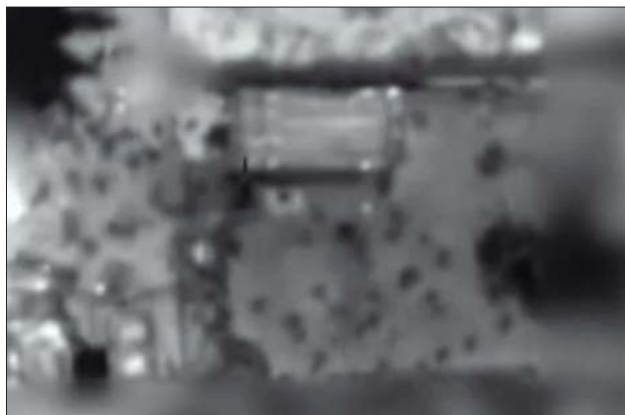
But faulted they are, despite going far beyond what international law requires, in ways that are surprising and maybe a bit *meshugge*. This scribe has spent time down-range in Iraq and Afghanistan with U.S. troops, who are known to chafe under rules of engagement propounded in part by our own Pentagon lawyers. But after two weeks embedded with the Dabla attorneys and meeting with front-line commanders, including drone pilots, tank drivers, paratroopers, and infantry soldiers, it's hard not to be a tad taken aback by the IDF's legal zeal.

Virtually every Israeli has lost at least one buddy in war. Israeli soldiers die hard, to snipers, IEDs, mortar fire, and so on. But one Israeli soldier after another still weighed in, quite sincerely, indicating that he sees civilians in Gaza as victims of Hamas terror. Captain Dori tells a story. He's camped out at an obscure IDF base deep in the West Bank overlooking Hebron. Dori is a tank commander in the 188th Armored Brigade and another IDF officer whose full

name I cannot use. “We were involved in fierce fighting in the early days of the ground incursion into Gaza,” Dori says. “I was driving my tank, a Merkava Mark III, down a very tight spot, and we were taking lots of incoming. We knew where the fire was coming from and prepared a shell. Just then, a man ran out of his house, immediately in front of my tank. I don’t know who was more surprised, he or I. I had my head up above the tank, exposed, looking around.



Seen by an Israeli drone, a non-lethal IDF warning shot landing on the roof of a Hamas installation . . .



. . . sends some inside fleeing down the street but also brings a swarm of those inside to the rooftop as human shields.

He had an AK-47 and started shooting at me. Bullets were pinging off the tank. I could see his eyes. He was maybe 15 meters away. Luckily for me, he missed.

“Then he ran back into the house and came out 10 seconds later into the middle of the street carrying a boy of 8 or 9 years. He used that kid as a human shield. The boy had on a white tank top and no shoes. I had heard of Hamas fighters doing this, but it still shocked me. Of course, we stopped firing. The man got away, and left the kid in the middle of the street. I can still remember the kid’s face; he had no idea what was happening. We try very hard only to injure terrorists and to allow civilians to live. Our enemy does the opposite; they want to kill civilians.”

Other examples abound in which Israelis delayed or called off legitimate strikes against enemy combatants to protect civilians. Take the July 9 case in Gaza City that involved a car marked “TV” to mask the fact that the vehicle was, in fact, carrying Hamas fighters and weapons; nonetheless, the Israelis delayed the attack. Retired general Gadi Shamni, formerly the IDF’s military attaché to the United States, says that “ultimately, we go the extra mile to protect civilians because of Israel’s values, our souls, our morality.”

Speaking of morality, let’s turn to the second document. This is a “doctrine manual” prepared by Hamas and captured by IDF ground forces in Shejaiya in early August. The document advocates that fighters embed themselves among Palestinian innocents, in the hope that the IDF will kill civilians. Translated from the Arabic, the manual proudly proclaims, “Collateral damage to civilians and civilian property increases the hatred of the citizens towards the attackers and increases their gathering [support] around the city defender [Hamas].”

There you have it: Hamas’s playbook calls for helping to kill its own civilians, while the IDF’s playbook goes to extreme—some say inappropriate—lengths to protect innocent life in war.

Buried deep in an old bunker at a Tel Aviv military base is the IDF’s visual operations room. Sit for an hour and you can watch live black-and-white footage of Hamas fighters in Gaza using random kids as human shields while bullets are flying; firing weapons from the second floor of al-Wafa Hospital (used as a command-and-control center as well as a surveillance post); and jumping into a clearly labeled Red Crescent ambulance to escape fire from IDF ground troops.

Then there’s the time that Palestinian families were seen scurrying up to a rooftop right after the IDF had warned civilians to evacuate. Why? Who knows for sure. The most likely explanation is that savvy Hamas commanders knew a win-win situation when they saw one. Hamas fighters have been known to force families into harm’s way. Hamas operatives know that IDF commanders will likely call off a strike if many civilians are present. But if the civilians are killed, well, there will be graphic photos to show off to sympathetic journalists. “We can prove we are in the right because in many instances the video is there for all to see,” says Lt. Col. Limor Gross-Weisbuch, who runs the IDF’s video unit. “But the outside world doesn’t seem to care.”

She is, sadly, correct. Surely, the world has been turned upside down. A powerful coalition of self-righteous journalists, pro-Palestinian NGOs, left-leaning academics, biased human rights organizations, and, of course, the United Nations has looked at some situations and routinely accused the IDF of perpetrating war crimes, of murdering innocents, of gross violations of international law.

IMAGES: IDF

Witness a U.N. Human Rights Council decision to create a commission of inquiry into the Gaza conflict. The timing was a bit off. The commission was created *before* the conflict had ended, yet still managed to condemn “widespread, systematic and gross violations of international human rights” and “disproportionate and indiscriminate actions” against civilians. The alleged bad guys? Yes, the IDF. There is no pretense of fairness or intellectual honesty. What proper international inquiry comes to conclusions *before* the investigation has taken place?

Scads of petitions to charge Israeli soldiers with war crimes are being prepared for filing at the International Criminal Court (ICC) in The Hague. The charges are mostly trumped up and ridiculous, but IDF lawyers take them seriously. It’s for this reason that journalists are forbidden from using the full names of many soldiers. Dabla attorneys fear that Captain Ben—and thousands of others like him wearing the IDF uniform—might be arrested for alleged war crimes if vacationing in Europe.

It’s worth noting that Dabla attorneys do far more than sign off on targeting cards and provide advice on rules of engagement and proper methods of combat. They are probably unique among military lawyers in the scope of their involvement within the IDF. Wander around the unit’s offices on the third floor of a drab concrete building inside IDF’s central command base in Tel Aviv and you’ll hear lawyers providing advice on proper use of weaponry, treatment of detainees, humanitarian issues like getting grocery items to Gazan residents, working with U.N. peacekeeping missions, even relationships with foreign militaries and the tricky details of peace agreements. Dabla attorneys are there when Israel is sued in Turkey for intercepting a flotilla trying to smuggle arms into Gaza, and when anti-Israel groups try to use foreign courts to obtain arrest warrants against IDF officers.

Yet in the court of international public opinion, the IDF is considered lawless. “I call it the ‘bigotry of double standards,’” says Geoffrey Corn, a leading academic expert on military law who coauthored a thoughtful report on the 2014 Gaza conflict for the Jewish Institute of National Security Affairs (JINSA). Legions of so-called experts on military law have sprung up in the post 9/11 milieu, and many are fairly naïve about the realities of war. Says Corn, a retired U.S. Army officer, “They see images of dead civilians and suppose, quite wrongly, that Israel is at fault.”

The definition of proportional strikes against those directly participating in hostilities is pretty easy to understand for those who bother to read the law. Strikes against

lawful targets are fair game as long as at the time the decision was taken, it was considered that the collateral damage from the strike would not be excessive in relation to the military advantage anticipated from the strike. Sounds simple.

But whether rooted in naïveté or bias or outright anti-semitism, many international groups remain predisposed to blame Israel. The sad fact is that war is terrible. People get killed. But Hamas knows that if its clever propagandists can show enough photos of dead civilians—even those unintentionally, if lawfully, killed—well then, it’s easy to convince both sympathizers and suckers that Israel must be guilty of war crimes.

This logic is unadulterated malarkey. A senior U.S. military lawyer who has visited Israel and is familiar with IDF



A crowd of human shields atop a roof in Gaza, with children circled

operations explains, “People expect zero civilian casualties all the time. That’s not what the law requires. War is an ugly business where sometimes innocents get hurt.”

There is a term for the wrongheaded reasoning that sees dead civilians and concludes somebody must be guilty of something awful. It’s called “cumulative collateral damage.” The theory, used against Israel by its enemies, is that if hundreds of civilians die, even if every proper precaution has been taken, then Israel must be guilty of war crimes.

This radical interpretation of the law of armed conflict is gaining traction in some circles. Still, it’s plain nonsense. Actions are properly assessed per attack, not per war. Further, intentions matter. A commander can’t possibly know everything in the fog of war; sometimes civilians pop up in places no one can predict. The law is pretty straightforward on the fact that what matters is whether the commander intended to kill civilians.

Hamas knows it cannot win a military conflict with Israel so it sets different objectives; a primary purpose of the latest Gaza conflict, and one at which Hamas was quite

effective, was, according to the detailed 75-page report prepared by JINSA, building “a well-orchestrated information campaign to distort the media’s understanding and reporting of the conflict in order to undermine Israel’s international legitimacy.” No surprise: This media strategy worked.

How about an investigation of Hamas’s war crimes? Don’t hold your breath, even though Hamas wrote the book on violating the law of armed conflict. Explains the JINSA study, “Hamas deliberately and unlawfully placed command and control, firing positions and logistical hubs underneath, inside or in immediate proximity to structures it knew the IDF considered specially protected, to include hospitals, schools, mosques, churches.” Hamas is quite shrewd at exploiting the IDF’s adherence to international laws. Hamas is already designated a terror organization; what do they care if policymakers in Washington or Paris think they fight dirty?

IDF Captain Guy (again, no last name allowed for him) was the Dabla legal adviser assigned to the Erez border crossing in northern Gaza during last summer’s conflict. True to form, Guy’s advice appears to have gone beyond the requirements of international humanitarian laws. After hearing his legal opinion, the IDF facilitated ambulances for wounded Hamas fighters and even coordinated the movement of an Israeli tank so that Palestinian laborers could repair a damaged fiber optics cable for the Gazans.

Did Hamas return the favor? That’s a silly question. Guy’s office window is pockmarked with shrapnel holes. In the parking lot just on the other side of his window is a crater where a mortar exploded. The young captain spent much of the 2014 conflict sprinting into a nearby bunker; when the sirens went off indicating incoming rockets, he had maybe five seconds to get to safety. Hamas poured down rockets and missiles on the crossing, killing their own civilians and even knocking out a U.N.-run school.

“We go beyond our legal obligations,” says Guy, an ever-ready assault rifle strapped to his side, “because we care deeply about civilians. But we also see a bigger world of moral, humanitarian, and public relations considerations.”

A slight detour is needed back to Dabla and its 20 or so high-end lawyers. Like their counterparts in the United States, Dabla’s attorneys make a mere pittance of what they could be hauling down in the private sector. But there are

distinctions. The first striking difference from, say, the U.S. Army’s JAG Corps has to do with Dabla’s authority. In the United States and other Western military chains-of-command, the attorneys work for, and are subordinate to, higher-ranked combat commanders. Not so in Israel.

Dabla attorneys report up the chain of command only to higher-ranking attorneys. Dabla’s lawyers don’t merely give advice to IDF commanders; their legal positions are binding on commanders. The power and influence of the Dabla attorneys have ballooned in the last 10-15 years. “Even today, you hear the occasional commander say that the legal advisers are a pain,” says Col. Avi Gil, a former combat brigade commander who today runs the Officer Training Academy in Mitzpe Ramon in the Negev Desert. “But 10 years ago, that sort of skepticism was the majority. Today, virtually all commanders think the Dabla attorneys are useful.”

Israeli scholar Yoram Dinstein, a distinguished expert on military law, has a more cynical theory: “As long as Dabla signs off on a military action, the commanders know they can always blame the attorneys if things go wrong.” Of course, that also means that the commanders tend to abide by Dabla’s advice.



A hidden entrance to a terror tunnel running beneath the Gaza border into Israel

Dabla’s existence is virtually unknown outside Israel; still, the unit’s attorneys can write their own tickets if they choose to leave military service. Daniel Reisner, another former Dabla chief and today a partner at Herzog, Fox & Neeman, Israel’s largest and most prestigious law firm, says there are good reasons Dabla attorneys are in high demand. “Dabla’s graduates share high IQs, have subject matter expertise, commendable work ethics, and are trustworthy,” says Reisner. “They have spent their careers making decisions where people can die when they get it wrong.” They don’t make many mistakes. It’s no surprise to find another former Dabla senior legal adviser at Harvard Law School, where Gabriella Blum is the Rita E. Hauser professor of human rights and humanitarian law.

The competence of Dabla’s attorneys rings clear, but a visiting correspondent is also struck by the attorneys’ eclectic backgrounds. Filling Dabla’s ranks today are a former corporate lawyer from Australia and a French attorney—a young mom, actually—who holds a master’s in

IMAGES: IDF

international law from the Sorbonne. Then there's the ultra-orthodox Jew who wears a yarmulke and *tzitzit* to reflect his religious beliefs. Another Dabla lawyer has movie star good looks and an incisive legal mind honed while earning a Ph.D. in international law from New York University.

Why am I not surprised to find an intellectually gifted philosopher-lawyer leading this unit? The current Dabla chief, Colonel Noam Neuman, not only graduated from the University of Virginia's JAG School but also earned a master's in philosophy from Bar-Ilan University in Israel. Dabla officers are not just academic nerds. Many have seen kinetic action in combat and speak the language of the battle-tested commanders to whom they offer advice. Take the case of the former combat soldier who proudly displays jump wings on his uniform from his time in the elite Golani Brigade.

Standing in the dust looking at enemy territory a stone's throw away, Ben is asked why he was willing to leave a high-powered corporate law job to serve in the IDF, in a country where war can, and does, break out at a moment's notice. "Israel is at the forefront of applying international law in real-life situations," he explains. "We're not sitting in lecture halls discussing these issues theoretically. We deal on a daily basis with everything from peace negotiations to targeted killings. Who would want to miss that?"

The primary real-life situation Ben and his colleagues return to again and again is protecting civilians. Nothing is trickier than figuring out how to avoid civilian casualties when fighting in urban areas, and when the adversary deliberately embeds itself in the civilian population. A young drone pilot and air force captain named Dan tells the story. He is based at Palmachim Air Force Base, which abuts sand dunes overlooking the Mediterranean.

During the conflict last summer, Dan was providing aerial surveillance of five presumed Hamas fighters who had been spotted sneaking out to a field. "They lifted what appeared to be a rocket launcher up from a hidden spot," he says. "The IDF fighter pilot with whom I was coordinating was cleared 'green' to take these out these enemy combatants. I stayed on-station.

"Two seconds before the missile was to be released, I took another look and saw it was a hose they had picked up. They were farmers. My heart was beating like crazy. I

called off the strike just in time. There is just no way that these civilians deserved to be hurt. They are decent people, caught in a horrific situation." Like many young Israeli soldiers, Dan brings to mind less a hardened military man than the kid with thick glasses who sat next to you in 11th grade AP chemistry.

IDF lawyers open what they call an "examination" into every allegation of misconduct. No matter who files a complaint, it is thoroughly checked out and, when possible, a report written and released publicly. The impetus for such an examination could be a complaint from a garden-variety anti-Israel NGO or even a news report from a pro-Palestinian TV crew. An example: The U.N. Office for the Coordination of Humanitarian Affairs filed a report claiming that IDF forces had shot into a mosque in Jabalia in Gaza last July 31 and that shrapnel from those shells had hit a U.N. school, injuring 10 civilians.

The examination determined that Hamas, or another terrorist group, had launched the rocket in question from an area in which the IDF was not operating. (The IDF can pinpoint in

real time where rockets and mortars are being launched.) The Palestinians shot up a U.N. school and then tried to blame the IDF.

Lest one worry that the IDF whitewashes these affairs, several files have been presented in which an initial finding showed enough evidence of possible wrongdoing by Israeli military units to refer the cases for criminal investigation. But these were a mere handful of the 126 so far under review.

No investigation is needed in the case of Staff Sergeant Addi. He graduated from high school in California in 2012, moved to Israel, enlisted in the IDF, and found himself entering Gaza on foot with his paratrooper unit on the third day of the ground war in the 2014 conflict. He spent 19 days in intense urban fighting. One day, his unit uncovered a booby-trapped floor in a tool shed that housed a hidden terror tunnel. A Palestinian farmer or his kids who happened to be walking by could have been blown to bits. Another day, Addi's unit found a weapons cache with AK-47s, grenades, and missile launchers in a private home with young kids. He also came across an ambulance carrying explosives. "There's no way that you can mentally prepare yourself," he says, "for Hamas's disdain for human life, even for their own people."



Hamas weapons cache in a child's bedroom, with crib at right

Increasingly, the IDF and Dabla specifically, have been taking grief from a surprising quarter for their unique policies on avoiding civilian harm: academics and lawyers who are otherwise friendly to the IDF, or at least not openly hostile. Take the case of Wolff Heintschel von Heinegg, a distinguished expert on military law at European University Viadrina in Frankfurt. Dabla recently brought this law professor, and other top military law experts from outside Israel, to further train IDF combat commanders in the intricacies of the law of armed conflict.

Speaking at a smallish military base outside Tel Aviv, the German lawyer acknowledged that the IDF went to “great and noble lengths” to avoid civilian casualties in Gaza and other recent conflicts. However, he believes that the IDF is taking “many more precautions than are required” and in doing so, he fears the IDF “is setting an unreasonable precedent for other democratic countries of the world who may also be fighting in asymmetric wars against brutal non-state actors who abuse these laws.”

He’s not alone. When Pnina Sharvit Baruch, a former Dabla chief, attends legal conferences around the world, she says she faces “recurring claims” from other militaries’ legal advisers that the IDF “is going too far in its self-imposed restrictions intended to protect civilians, and that this may cause trouble down the line for other democratic nations fighting organized armed groups.” Today, Baruch is a senior researcher at the Institute for National Security Studies in Tel Aviv.

Israel’s fight with Hamas is not just an example of classic asymmetric warfare, it’s also just plain nasty. Why? Hamas may be a nonstate actor but its militants have access to a broad array of sophisticated weaponry that is more typically found in the arsenals of nation-states. Either way, bad news for Israel.

And maybe bad news for other Western nations as well. “The IDF’s warnings certainly go beyond what the law requires, but they also sometimes go beyond what would be operational good sense elsewhere,” says Michael Schmitt, director of the Stockton Center for the Study of International Law at the U.S. Naval War College. “People are going to start thinking that the United States and other Western

democracies should follow the same examples in different types of conflict. That’s a real risk.” Schmitt is the author of a just-completed comprehensive analysis of the IDF’s targeting systems.

There’s another risk to the preoccupation with protecting civilians. Some commanders and outside legal experts worry that Dabla attorneys risk discrediting themselves in the eyes of the major consumers of their advice, combat commanders. The commanders at some point may say, “Why? We went overboard to protect civilians last time and we still got criticized. What’s the point?”

A valid question, and one for which Colonel Neuman has an unequivocal answer. “We tell commanders what they need to do to comply with international law. We are clear with them that they don’t need to do more but in a lot of cases they do anyway.” Neuman, a gentle soul who radiates integrity, leaves no doubt he believes that it’s the IDF commanders—and not Dabla—who do more than what is required by international law.

Despite Neuman’s unambiguous response, ambiguity remains as to who is the driving force behind the IDF’s taking such extensive measures to minimize civilian casualties. The commanders say

the lawyers. The lawyers say the commanders. The Naval War College’s Schmitt believes both fighters and lawyers in the IDF share responsibility for the high standards. Ultimately, does it really matter?

There’s one final risk to Israel that stems from this preoccupation with protecting civilians. This risk comes from the north, where Israel faces a far more dangerous enemy than Hamas. That would be Hezbollah, the militant Islamic group, supported and funded by Iran, that controls southern Lebanon. Hezbollah is exponentially stronger and better equipped than Hamas. It seems readily apparent that the IDF will not be able to use methods like individualized phone calls and “roof knocking” in combat with Hezbollah. Will IDF officers then get hammered for acting one way in Gaza and another way in southern Lebanon? It’s a good bet they will.

No matter. For better or worse, combat commanders and Dabla attorneys will bend over backwards to prevent civilian casualties. The concept is simply deeply embedded into the IDF culture. ♦



Israeli medics treat a wounded Hamas militant who was part of an attack on IDF ground forces, July 18, 2014.

The Fall of Big State U

Is big government killing our public universities?

BY JAMES PIERESON

According to a report released in April by the American Association of University Professors, the gap between the salaries of faculty at private and public universities is widening. The AAUP's "Annual Report on the Economic Status of the Profession" stated that at public institutions full professors' salaries averaged \$130,039 and assistant professors' \$77,446 in 2014, while at private institutions the average salary of full professors was \$177,600 and assistant professors \$95,312. The salary gap has been growing year by year and decade by decade as a reflection of the growing wealth gap between public and private universities.

Even while the rest of the economy struggled over the past few years, college and university endowments did reasonably well, surging by an average of 11.7 percent in 2013 and 15.5 percent in 2014, according to the National Association of College and University Business Officers. While a few public institutions, such as the University of Texas system, possess large endowments, private institutions hold the overwhelming proportion of billion-dollar-plus endowments and have disproportionately benefited from the most recent six-year bull market in stocks.

Things have gone downhill, meanwhile, for public colleges and universities as legislatures across the country have cut back on appropriations for higher education. According to the AAUP study, state legislatures reduced appropriations for higher education by an average of 16 percent between 2008-09 and 2012-13, even as many of the same legislatures placed caps on tuition increases. The financial squeeze has taken a toll on the quality of instruction offered at some of our best public institutions. Unfortunately, the situation is likely to get worse in the years ahead given the condition of state and federal budgets and the intense competition for public funds.

But current financial pressures have only brought out into the open a process that has been going on for several decades: Public institutions—especially the so-called flagship institutions—have been losing ground to private colleges and universities since the 1970s. This is not good news

for middle- and working-class students, who have long relied on public universities as avenues for upward mobility.

There was a time not so long ago when elite public institutions, such as the University of California, Berkeley, the University of Michigan, and the University of Wisconsin, more than held their own against competition from Harvard, Yale, Princeton, Stanford, and other elite private institutions. Berkeley's reputation for academic excellence in the 1950s and '60s was unsurpassed; indeed, in the mid-1960s many experts considered Berkeley the finest university in the world. Flagship universities in Michigan, Wisconsin, Illinois, Minnesota, North Carolina, and Virginia earned rankings in the top 10 or 20 universities in the country. Few private institutions could match the range of outstanding research programs offered at flagship state institutions, particularly in expensive fields like the sciences and engineering. Admission to these institutions was widely sought after by out-of-state students willing to pay premium tuition to gain access to high-quality education. With enrollments in excess of 25,000 and in some cases 35,000 students, these institutions dwarfed the privates in scale but delivered a great deal of educational "bang for the buck." Degrees from Berkeley, Michigan, and Wisconsin were judged equivalent to those from the top private institutions.

Today the situation is greatly changed. Only one public institution is listed among the top 20 schools in the 2014 ranking by *U.S. News and World Report*—Berkeley, which ranked 20th. Virginia and UCLA came in at 23, Michigan at 28, and the University of North Carolina at 30. The rankings changed little in 2015: Berkeley remained at 20, Virginia and UCLA at 23, Michigan dropped to 29, and the University of North Carolina remained at number 30. Thus, among the top 30 national universities in the *U.S. News* study, only 5 are public institutions.

The *Forbes* ranking, which uses a different methodology that takes into account both the cost of the college and the quality of its educational program, lists only 1 public institution in the top 20, West Point, and just 7 more in the top 50—certainly an indictment of the quality of instruction offered at the less costly public institutions. In that survey, Berkeley comes in at number 37, the

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University of Virginia at 40, and Michigan at 45, while flagship universities in Wisconsin, Illinois, and Minnesota do not make the cut at all. For the first time, private institutions—and not just the Ivies—dominate the roster of our best colleges and universities.

There are undoubtedly many causes of this far-reaching development in higher education. Public universities in the Midwest have had to cope with population changes and the decline of the auto and steel industries in their states. At the same time, private institutions have benefited disproportionately from the stock market boom of the last three decades, which has provided them with the resources to recruit top faculty and students while expanding their research and educational programs. Public universities, long in the habit of relying upon legislative appropriations, have only recently begun to tap this expanding source of private wealth.

Yet there is a more fundamental cause for this reversal of fortunes in higher education. To put it simply, big government is killing the elite public university.

In the heyday of the flagship universities in the 1950s and 1960s, state governments spent the bulk of their funds on just a few functions—primarily transportation, public safety and corrections, and higher education. During this period, flagship universities had few competitors for state funds, and, indeed, with their alumni numerous in the legislatures and the baby-boom generation headed off to college, they were well positioned to lay claim to a rising share of state budgets. Across the nation, close to 20 percent of state budgets flowed into the public universities at a time when public employee pensions, health care, and K-12 education were still minor line items. For a brief time, the political environment favored generous investments in elite public education. That environment encouraged an increasing share of 18-year-olds to enroll in public universities, and it attracted some of the most able young Americans into college teaching.

That is no longer the case. The flagship universities now face an unfriendly political environment in many places as a result of the expansion of state governmental functions since the 1960s. States now have many functions

and constituent groups to attend to that command more money and attention than higher education. According to a report by the National Association of State Budget Officers, Medicaid accounted for 26 percent and K-12 education another 20 percent of total state expenditures in 2014, proportions that have been expanding steadily for years. Thus, nearly half of all state expenditures are now allocated to two programs that commanded no state resources during the heyday of public higher education in the 1950s and 1960s. The well-connected advocates and interest groups that support these programs are unlikely to permit those

shares to decline. Public employee pensions, meanwhile, command about 5 percent of spending in many states, but, thanks to years of underfunding and deferred payments to the funds, some experts expect that share to grow to perhaps 10 or 12 percent in the decades ahead.

By contrast, higher education now lays claim to just 10 percent of state expenditures, or roughly half the share allocated to

this sector in the 1950s and 1960s. Total expenditures for public education have grown in nominal terms over the decades, but not as rapidly as in the immediate postwar period or as rapidly as state expenditures in general have grown in recent decades. In the scramble for public dollars, the flagship universities must now contend with public employee unions demanding funds to pay for salaries and pensions for their members, court orders and referenda directing ever more public money to K-12 education, and the lure of federal matching funds for Medicaid, welfare, and other federally subsidized programs. Given political realities, the universities are unlikely to win many of these battles.

On top of this, the flagship universities today must share public appropriations with an expanding complex of regional campuses and community colleges that barely existed in the 1950s and 1960s. The California legislature created an elaborate and expensive three-tiered system of research universities, regional universities, and community colleges in the early 1960s just as the University of California was reaching a pinnacle of influence and prestige. Other states expanded in parallel ways. Michigan now supports 43 distinct institutions of higher learning, all in financial competition with the state's two flagship institutions. The state of Wisconsin supports 31 such



A picket line at California State University, East Bay, in Hayward, California, November 17, 2011

institutions, in addition to its flagship campus in Madison. These second- and third-tier institutions have representatives in the legislatures demanding their share of state higher education dollars. In addition, more and more teachers at the lower-tier four-year universities and community colleges are leveraging their power by joining unions that bargain and lobby on their behalf. Professors at elite institutions have so far resisted pressure to unionize out of professional loyalties and convictions about advancement through individual accomplishment.

All of this has had the predictable result of forcing flagship universities to look for other sources of financing such as federal grants, private philanthropy, and increases in tuition that are paid for by rising levels of student debt. Public research universities are now more reliant on tuition and federal funds to support their far-flung activities than on state appropriations. Across the country, revenues from tuition at public research universities have increased from 24 percent of total revenues in the 1980s to more than 47 percent in 2014. At the same time, according to a recent report from the National Science Foundation, state appropriations for public research universities account for just 23 percent of total revenues, down from nearly 40 percent in 1992. At the University of Virginia, state appropriations account for just 10 percent of total revenues, and at the University of Michigan the figure is about 9 percent (down from 80 percent in the 1950s). The pattern is similar, though less extreme, at other public research institutions across the country. We may be reaching the point where it no longer makes sense to describe these flagship universities as “public” institutions.

None of these strategies of diversification is likely to work over the long run. While federal spending on higher education has shot up in recent years (largely in the form of increasing appropriations for Pell Grants), these funds are divided many ways among the 3,000-plus colleges and universities across the nation and the expanding for-profit sector of higher education. Private philanthropy is now a source of funds for institutions like the University of California, the University of Virginia, and the University of Michigan, but this sector is not large enough to make up for declining public support for these institutions. Private donors, moreover, have always been skeptical about funding state universities that, when all is said and done, are

still controlled by state legislatures. For this reason, they will allocate the largest share of their philanthropic dollars to private institutions. As for tuition increases and student loans, those two sources of revenue have now passed beyond the limits of affordability.

The reshuffling in status and financial resources between public and private institutions is one of the more significant developments in the history of higher education in the United States, at least since the invention of the modern university in the latter decades of the 19th century. Few academics at public universities foresaw in the 1960s that the expansion of the welfare state might

eventually come at the expense of their institutions. In those heady days, academic liberals assumed that public universities would always stand at the front of the line in the distribution of federal and state funds. They were wrong about that, as things turned out, and in this sense they are partly responsible for the situation in which they find themselves today. Meanwhile, as money, research talent, and top students flow to private institutions, the status and resource gap between public and private universities is likely to grow.

Does this matter? For all their flaws, flagship public institutions in the postwar era provided hundreds of thousands of

working-class and middle-class Americans with a quality education and an affordable avenue of upward mobility and prepared generations of leaders. The top 20 public universities enroll about three times as many students as the 20 most prestigious private institutions, and in-state tuition and fees at those institutions (\$13,000 on average in 2014-15) remain more affordable for middle-class families than those at the leading private institutions (\$47,000 on average). Public institutions also provide various other services to citizens through their medical schools, hospitals, libraries, art galleries, theaters, and research and extension services. The great state universities are not going to disappear, and many will maintain a standard of excellence, but in an age of lumbering and inefficient governments trying to do all things for all groups, they will not have the money to perform at their former level or to compete as they once did with high-performing private institutions. ♦

At the University of Virginia, state appropriations account for just 10 percent of total revenues, and at the University of Michigan the figure is about 9 percent (down from 80 percent in the 1950s). We may be reaching the point where it no longer makes sense to describe these flagship universities as ‘public’ institutions.



With Lana Turner at the wheel, John Garfield tries to kill Cecil Kellaway, 'The Postman Always Rings Twice' (1946).

Crime Pays Off

Why you should raise the kids on crime fiction. BY STEFAN BECK

A character in Elmore Leonard's 1976 novel *Swag* devises and swears by "ten rules for success and happiness." He carries them on his person, scrawled "in blue ink on ten different cocktail napkins from the Club Bouzouki, the Lafayette Bar, Edjo's, and a place called The Lindell AC." This budding Dale Carnegie is keen on success and happiness in a very specific context: armed robbery. Is his system foolproof? We wouldn't

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have much of a story if it were. We sure as hell wouldn't have a Leonard novel, with poor choices and their nasty results piling up faster than a Detroit snowfall.

Twenty-five years after *Swag*'s publication, and perhaps in homage to that book, Leonard offered 10 rules of his own—for writing, that is, not knocking over liquor stores—to the *New York Times*. Most were standard fare about avoiding adverbs and exclamation points, but the final rule is interesting: "Try to leave out the part that readers tend to skip." Makes sense, but it also raises the question: Who skips

ahead? Most grown-up readers either slog through a book's slower sections, like the sewer history in *Les Misérables*, or take their impatience or boredom as a cue to read something else.

Who skips ahead? Kids do.

They do this, I suspect, in two situations. One is when they are tasked with reading a grown-up book that they find utterly unendurable. I recall the anguish with which my high school self read *Ethan Frome* before having the bright idea that I could still pass the quiz if I just read every third page. (It didn't work.) The other situation is when kids are reading for plot

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in a book whose language is not captivating enough to keep their eyes from dancing ahead over tone-deaf dialogue, adverbs proliferating like some invasive species, and long passages of unnecessary description.

You know what I mean: a young adult (YA) novel.

I have no desire to enter the perennial and presumably click-driven debate over whether adults should read YA. Adults should read whatever they want, whether that means YA or Dummies manuals or Tijuana Bibles or even Thomas L. Friedman. But kids are a different story. The literature they are exposed to will influence not only their adult reading habits but their personalities and inner lives. Today's parents are likely correct to assume that little Jason or Chloe will not be taught to love reading by *Ethan Frome*. But there is plenty on the spectrum between Edith Wharton and *Divergent*, and it is going unnoticed.

Crime fiction—noir, detective novels, police procedurals, and madcap adventures in the Carl Hiaasen vein—may be the perfect thing to whet a young person's appetite for reading. At first glance, it is an odd candidate for this task: Isn't it violent, frightening, and perhaps even a corrupting influence? Isn't it laced with profanity and, in some cases, sexually explicit?

Yes, but the same is true of so much of the music, television, film, and even network news that parents are helpless to keep from their children. The same is true, for that matter, of many YA novels with far less literary merit than the best crime writing.

Parents have always fretted about the moral content of what their kids read. Andrew Levy's *Huck Finn's America* (2014) details the 19th-century panic over dime novels about pirates and banditry. David Hajdu's *The Ten-Cent Plague* (2008) details the furor over horror comic books in the 1950s. However one is inclined to regard the sensitivities of those eras, the fact remains that their scandalous productions are seldom revered as art. Raymond Chandler, James M. Cain, Dashiell Hammett, Jim Thompson, Charles Willeford, and Elmore

Leonard have, by contrast, all been enshrined in the Library of America.

These men wrote violent, lurid trash, yet they are now as canonical as Irving, Hawthorne, and Twain. And you can give said trash to your kids without a pang of conscience, knowing that they will encounter in it something of the American literary tradition. That is not, on its own, reason enough to choose crime fiction over either classic literature or YA, and a balanced diet should probably include all of the above. Still, crime fiction combines the best of both the classics and modern YA, while adding some nourishing ingredients of its own.

The best crime writing is excellent prose at the sentence level, and while it may not be up to the standard of a Melville or Twain (what is?), at least it handily surpasses the best-written YA. The classic opening line of James Crumley's *The Last Good Kiss* (1978), a book Otto Penzler of the Mysterious Bookshop and the Mysterious Press considers the ne plus ultra of detective stories, was quoted in several of Crumley's obituaries:

When I finally caught up with Abraham Trahearne, he was drinking beer with an alcoholic bulldog named Fireball Roberts in a ramshackle joint just outside of Sonoma, California, drinking the heart right out of a fine spring afternoon.

Few novelists in the Western canon have written better or more evocative dialogue than George V. Higgins in *The Friends of Eddie Coyle* (1970): His grim characters never sound like anyone you know, but you know they must be out there somewhere. At the same time, most crime fiction, like YA, is aggressively, unapologetically plot-driven, with nothing to skip, making it ideal for those with Disney Channel attention spans. And needless to say, the sex and violence that might make crime fiction a tough sell for parents make it anything but for kids, who crave a taste of the forbidden.

Crime fiction presents not only the forbidden but also the merely grown-up. It affords an entrée into the adult world. Its protagonists are not vampires,

wizards, or futuristic reality-show contestants but real people with real jobs. Along with private eyes, one finds in the pages of crime literature insurance agents (James M. Cain), process servers and bail bondsmen (Elmore Leonard), profilers and forensic scientists (Thomas Harris), park rangers (Nevada Barr), military policemen (Lee Child), and undercover cops (Matt Burgess). At a time when children are led to believe that they can get rich off an app or a pop single, such exposure to hard, dangerous, selfless work is invaluable.

Crime writing is, by definition, travel writing—and sometimes time-travel writing—as well. The best crime writers mark their territory and then bring it to life. Dashiell Hammett and James Ellroy can take you to California; James Crumley to Montana; Elmore Leonard to Detroit; James Lee Burke to Louisiana; Charles Willeford and Carl Hiaasen to Florida; Daniel Woodrell to the Ozarks; Dennis Lehane to Boston; and Richard Price to New York City. Get your kids a library card, and they will know their country and its underbelly—and develop a sense of empathy and curiosity—long before the time comes for a college tour.

By empathy and curiosity, I do not mean gullibility. Crime writers rarely glamorize crime and violence the way television and movies do. They do not present bad guys who are always victims of society and circumstance. Often they fulfill a scared-straight function, showing how one decision born of greed or impatience can send a life into a tailspin of cascading failure. The “ten rules” in Leonard's *Swag* are applied selectively, as a teenager would apply them: The thing most likely to go wrong is always brushed aside with a flourish of wishful thinking. This juvenile sense of Teflon untouchability, this inability to know who or what to trust, is what dooms the born loser of a crime novel.

I didn't read my first crime novel (Dashiell Hammett's *Red Harvest*) until college, where I shared my appreciation for the Continental Op with a friend whose brother worked in private investigation. I wish my teachers had given it to me sooner. It taught me to demand

a story from everything that I read. It showed me a moral universe both more ambiguous and more exacting than anything I had hitherto encountered. It taught me that, notwithstanding man's fallen nature, good and evil are not primitive myths.

If kids today need to be tricked and conned into reading something worthwhile, something as morally instructive and beautifully written as it is entertaining, then these bloody, crazy books ought to enjoy pride of place in every school library in America. ♦

BCA

Self-Correction

An economic depression is left to its own devices.

BY RICH DANKER



Harry Truman (left) as haberdasher (1920)

What if the economy goes off a cliff and the government does nothing to stop it? That's the question James Grant considers in the aftermath of the underwhelming stimulus era. And it's no hypothetical: In 1921, the American economy was in free-fall; every important sector from automobiles to agriculture went into liquidation while wages plummeted. *The Forgotten Depression* narrates the Keynesian unthinkable. The crash "cured itself,"

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The Forgotten Depression
1921: The Crash That Cured Itself
by James Grant
Simon & Schuster, 272 pp., \$28

as the subtitle puts it, and segued into the greatest recovery on record.

No one is more suitable to revive this story of modern economic heresy than Grant. Publisher of *Grant's Interest Rate Observer*, he has a command of economic history from the *ex ante* rather than the *ex post* point of view. His accounts are no mere look-backs, but rather 360-degree perspectives of how events unfolded. Most period

pieces smell of the library, but not Grant's, and it's his sourcing that's the tonic. *The Forgotten Depression* is a tour of a harrowing episode in American history—informed by memos, cables, speeches, transcripts, letters, periodicals, corporate communications, and the then-burgeoning field of economic statistics—that has a happy and counterintuitive ending.

By 1919, the economy was frothy on the heels of post-Great War inflation. A nice pair of shoes that had cost \$3 before the war now was \$10 or \$12. General Motors had nearly doubled both its sales, to \$510 million, and its head count, to 86,000 employees, from the year before. In 1919, GM started construction on the world's largest office building for its new Detroit headquarters. Harry Truman and a partner opened a menswear store at a prominent location in Kansas City, with shirts that sold for \$200 in today's money. It was clear to most observers of macroeconomics (another new field) that this easy-money phase of the business cycle couldn't last much longer. The question was: What, then, to do?

The downturn arrived in 1920, during the tail end of the Wilson administration, while the president was consumed by his crusade for the League of Nations and then incapacitated by illness. Wilson's successor, Warren G. Harding, purposely extended the hands-off approach: He believed that prices and wages had to fall on their own, taxes had to be reduced to prewar levels, and the federal budget needed to be brought into balance. In short, he believed in the self-correcting mechanisms embedded in free-market capitalism. The 1920-21 experience, which became a full-blown depression, would put that belief system to the test.

The Harding White House was complemented by a central bank that was willing to do the unpopular work of tightening credit. As was the case with Paul Volcker at the helm 60 years later, the Federal Reserve raised interest rates dramatically to combat double-digit inflation. Benjamin Strong, governor of the all-powerful Federal Reserve Bank of New York, had a plan (as Grant puts it) "to pull the rug out

HARRY S. TRUMAN LIBRARY AND MUSEUM

from under the American economy.” Higher interest rates would lead to less borrowing, which would force firms to cut prices, sell off excess inventory, and either reduce wages or lay off workers. Once American goods and investments were priced competitively for buyers at home and abroad, the economy would rebound. It wasn’t unanimous—the first rate hike was approved by the Federal Reserve Board only after the mercurial comptroller of the currency, John Skelton Williams, changed his vote—but the plan had complete support from the board’s chairman, W.P.G. Harding (no relation to the president).

Grant makes clear that the executors of the liquidation policy did *not* want what today’s self-proclaimed heirs of free-market economics say they want: stable prices. Strong and Harding both believed that deflation had to follow inflation for supply to meet demand and the economy to expand, even though it meant sure pain. At a time when a quarter of the workforce made a living in farming, the average value of crops per acre fell by half from 1919 to 1921. Businesses marked down their inventories more than 25 percent in 1921. Ford cut the price of the Model T from \$575 to \$440; General Motors wasn’t selling many cars, either, and had to follow suit.

Like the Federal Reserve, the American public was divided on how to respond to the slump that accompanied this deflation. President Harding vetoed a popular bonus bill for veterans in order to stick to his budget plan. Grant cites different sociological accounts of unemployment at the time: Some found that it built moral fiber while others saw it bring out the worst in people. But on the whole, neither the American people nor American business threw in the towel. The corporate debt default rate hardly budged as firms dug in with anticipation of better times around the corner—although Truman’s haberdashery went bankrupt.

What was so impressive about the ensuing recovery wasn’t that the nation’s leaders had prophesied it—they had—or the suddenness of its

arrival in mid-1921. It was the force that accompanied it. Corporate profits spiked from \$458 million to \$4.8 billion from 1921 to 1922. Residential construction grew from 110,000 buildings to 160,000. The automakers increased car production by 63 percent. Firms were healthier than they had been during the pre-bust inflation era: Their inventories were right-sized and their debts pared back. The liquidation had done its job.

Yet even while it was working before their eyes, economists on the left and right argued for a better way. John Maynard Keynes, witnessing the 1922 Genoa conference (which the United States declined to join), saw the global shift from settling payments in gold to national currencies as an advance that would let governments smooth out domestic fluctuations without having to trigger deflation. They could print their way out of international payment deficits. Yale’s Irving Fisher believed price stability to be the one true central banking goal, and the Federal Reserve followed it for the rest of the decade. A continued natural decline in prices, thanks to technology during

the Roaring Twenties, was thwarted and a new bubble in investments emerged under the guise of stable consumer prices. The decade would be bookended by another crash, and, of course, the response to it would be entirely different than in 1921.

Could the liquidation approach to economic collapse have worked in 2008? Grant and David Stockman, author of *The Great Deformation* (2013), are the only two observers who dare suggest it today. Defenders of Keynesian orthodoxy point to the modern superstructure of wages and their stickiness. But the Volcker purge of 1979-81 came at the high noon of organized labor, and the result was equally successful. Today’s resistance to self-correcting capitalism seems to be made of the “political expediency” that President Harding decried when he vetoed the bonus bill.

The depression of 1920-21 lasted only 18 months, but it’s unimaginable that anyone in Washington would ask the American public to stick it out that long today. Yet the economy rallied then and limps along today. We’re still searching for a cure. ♦



The Conversationalist

The more he learned, declared Michael Oakeshott, the less he knew. BY JOSEPH EPSTEIN

Philosophers, held Michael Oakeshott (1901-1990), are of two kinds: didactic and contemplative. The former tend to have minds that gravitate to the formation of bold and graspable ideas, the latter to thoughts less readily summarized. Aristotle’s golden mean, Descartes’s *cogito*, Kant’s categorical imperative, Hegel’s dialectic,

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and Marx’s economic determinism are examples of the first kind of philosopher. Schopenhauer, Santayana, and William James, figures without a reigning idea associated with their names, are examples of the second. The first group risks being too quickly understood; the second risks being easily misunderstood. Michael Oakeshott himself was among the second kind of philosopher.

In his essay “America’s ‘Exceptional’ Conservatism,” Irving Kristol tells of arriving at his desk one morning during his time as editor of *Encounter*

in London to discover the mail had brought, unbidden—or over the transom, as the phrase then was—a lengthy essay titled “On Being Conservative” by Michael Oakeshott, whom Kristol much admired. Kristol read the essay, he notes, “with pleasure and appreciation.” He reports that “it was beautifully written, subtle in its argument, delicate in its perceptions, and full of sentences and paragraphs that merit the attention of anthologists for decades, perhaps even centuries, to come.” Having finished reading the essay, Kristol turned to his typewriter and tapped out a letter of rejection.

Greatly admiring the essay though he did, Irving Kristol disagreed with it, and in fundamental ways. Kristol was, as he put it, “then in the earliest stages of intellectual pregnancy with those attitudes and dispositions that later emerged as ‘neoconservatism,’” and he found his own thoughts on a distinctly different track from Oakeshott’s. Kristol’s thinking had a religious bent; Oakeshott’s seemed ineluctably secular. Kristol was future-minded; Oakeshott locked firmly into the present. Finally and decisively, Oakeshott’s conservatism, in Kristol’s reading, offered no “guidance in coping with all those necessary evils, which can . . . destroy whatever philosophical equanimity we have achieved as a result of reading the writers of philosophy.”

Part of Irving Kristol’s disagreement with Michael Oakeshott had to do with the radical differences between English and American conservatism. England is (or at least was) a society aristocratic in spirit and based heavily on tradition. America is based on revolution. Americans, even ultra-conservative ones, have not given up on the idea of progress; English conservatives wish (or used to wish) to retard, even stop, progress. Evelyn Waugh once remarked that he would never again vote for the Tories: They had been in power for more than eight years and hadn’t turned back the clock one minute. American conservatism, Kristol recognizes, is “a populist conservatism,” which “dismays the conservative elites of Britain and Western Europe, who prefer a more orderly and dignified kind

of conservatism—which in actuality, always turns out to be a defensive and therefore enfeebled conservatism.”

Contemporary American conservatives look to the Founders and *The Federalist* as the sources of their political philosophy. Yet, according to Oakeshott in “Rationalism in Politics,” the Founders themselves were men who had no need of “persuasion that knowledge begins with a *tabula rasa*.” The Declaration of Independence, in this reading, is not a conservative document, but rather one closer to the ideas behind the French Revolution and “many later adventures in the rationalist reconstruction of society.”



Michael Oakeshott at Cambridge (1933)

At the heart of Irving Kristol’s disagreement with Michael Oakeshott, though Kristol doesn’t mention it, is the fact that Kristol was an intellectual, an immensely well-read and highly thoughtful intellectual, to be sure, and an activist; Oakeshott was a philosopher, one without the least interest in changing the world. As a philosopher, Oakeshott was labeled an idealist in the tradition of such English philosophers as J.M.E. McTaggart, R.G. Collingwood, and F.H. Bradley. Oakeshott’s systemic philosophy, as found in his *Experience and Its Modes* (1933), can be technical and, hence, formidable (or so I found) and not for amateurs, of whom I am one. Yet his view of the

role of philosophy is limited, modest, skeptical even.

Oakeshott’s philosophy isn’t about “persuading others, but making our minds clear.” For him, philosophy was in no wise a privileged form of knowledge but, instead, a manner of thinking, a machinery for making distinctions, a continuing act of clarification—one especially useful for investigating and waylaying presuppositions. Too often, he felt, philosophy was devoted to “making riddles out of solutions” and philosophers were people who spent their lives “enquiring where the candle flame went when it was ‘blown out.’”

Although he declared himself a conservative, Oakeshott suggested no programs, advocated no policies, and worked with no specific ends in mind. He held that the best we can do is attend to those “thinkers and statesmen who knew which way to turn their feet without knowing anything about a final destination.” Scientists, historians, politicians, economists, and poets all perceived the world through what he termed their separate “mode of experience.” And each of these modes, in the nature of the case, was partial, incomplete, only part of the story. Experience was, for various reasons, so richly complicated that the whole story might not be available: Certainly it was not to be encompassed through any discrete mode. Nor was there a mode encompassing all other modes; no mode, not even the philosophical, is architectonic.

What there is, Oakeshott believed, is conversation—unending conversation about the complexities of life and life’s proper ends. This conversation, he held, ought never to lapse into argument. Nor is it hierarchical. Every thoughtful person can participate. In “The Voice of Poetry in the Conversation of Mankind,” he wrote that “conversation is not an enterprise designed to yield an extrinsic profit, a contest where a winner gets a prize, nor is it an activity of exegesis; it is an unrehearsed intellectual adventure.” Life, for Oakeshott, as he put it in “A Place of Learning,” is “a predicament, not a journey.” The predicament is how to make the best of it and get the best out of it.

The answer for Oakeshott, as he set out most emphatically in “On Being Conservative,” is to cultivate

a propensity to use and to enjoy what is present rather than to wish for or to look for something else; to delight in what is present rather than what was or what may be. . . . To be conservative, then, is to prefer the familiar to the unknown, to prefer the tried to the untried, fact to mystery, the actual to the possible, the limited to the unbounded, the near to the distant, the sufficient to the superabundant, the convenient to the perfect, present laughter to utopian bliss.

For Oakeshott, conservatism was a disposition rather than a doctrine. From this disposition certain political positions followed, views of change and innovation key among them:

Whenever stability is more profitable than improvement, whenever certainty is more valuable than speculation, whenever familiarity is more desirable than perfection, whenever agreed error is superior to controversial truth, whenever the disease is more sufferable than the cure, whenever the satisfaction of expectations is more important than the “justice” of the expectations themselves, whenever a rule of some sort is better than the risk of having no rule at all, a disposition to be conservative is more appropriate than any other; and on any reading of human conduct these cover a not negligible range of circumstances.

Oakeshott found more reinforcement for these views in Montaigne and Pascal and Hume than in Burke or Bentham.

Politics did not hold out much promise for Oakeshott. He believed that government

is a specific and limited activity, namely, the provision and custody of general rules of conduct, which are understood, not as plans for imposing substantive activities, but as instruments enabling people to pursue the activities of their own choice with the minimum frustration, and therefore something which it is appropriate to be conservative about.

Oakeshott had his own religious sentiments and complex morality, but he felt that neither religion nor morals

had to do with politics, and politics had nothing whatsoever to do “with making men good or even better.” Dreams of perfect justice or perfect freedom ought to be excluded from politics, for “the conjunction of dreaming and ruling generates tyranny.”

The role of government should be much simpler: “to keep its subjects at peace with one another in the activities in which they have chosen to seek their happiness.” Ideally, politics, Oakeshott believed, should not be (as it has been in recent years in the United States) about dueling virtues, with one side intent on crushing the other. Nor, for those of conservative disposition, ought politics

to inflame passion and give it new objects to feed upon, but to inject into the activities of already too passionate men an ingredient of moderation; to restrain, to deflate, to pacify and to reconcile; not to stoke the fires of desire, but to damp them down.

Oakeshott’s strong antipathy was for what he terms “rationalism” in politics. Rationalism is the reign of confident reason expended on a subject that cannot readily be reasoned upon. Politics, “always so deeply veined with both the traditional, the circumstantial and the transitory,” will not obey the kind of technical expertise under whose banner rationalism travels. For the rationalist, no problem evades solution, and perfection will arrive promptly when, one by one, all problems are solved.

“Political activity,” Oakeshott writes, “is recognized [by rationalist thinkers] as the imposition of a uniform condition of perfection upon human conduct.” His book *On History* (1983) concludes with a dazzling essay, “The Tower of Babel,” about the greatest utopian planning project of all time: that of erecting a building that would reach to heaven. The essay ends on a scrap of verse left by a poet of the day that reads:

*Those who in fields Elysian would dwell
Do but extend the boundaries of hell.*

The villainous thinkers for Oakeshott are those who claim to have all the

answers. Thus, he condemns Francis Bacon, Descartes, Machiavelli, Locke, Bentham, Godwin, and, of course, Marx and Engels, “authors of our most stupendous rationalisms.” The rationalist thinkers can only breathe in an atmosphere of pure abstraction: “Like Midas, the Rationalist is always in the unfortunate position of not being able to touch anything, without transforming it into an abstraction; he can never get a square meal of experience.”

The thinkers Oakeshott most admired are Montaigne, Pascal, Hobbes, and Hume. They understood that, in political activity,

men sail a boundless and bottomless sea; there is neither harbor for shelter nor floor for anchorage, neither starting place nor appointed destination. The enterprise is to keep afloat on an even keel; the sea is both friend and enemy; and seamanship consists in using the resources of a traditional manner of behavior in order to make a friend of every hostile occasion.

Elsewhere in the same vein, he wrote: “If we are looking for something that is difficult to understand—this life supplies the need, we require to invent no others.”

Unlike most modern philosophers, Oakeshott was steeped in literature. When he writes of the rationalist’s knowledge never being more “than half knowledge, and consequently he will never be more than half-right,” he cites a character in a less-than-well-known Henry James story, “The Private Life,” who is in the same condition. Oakeshott’s writing is rife with literary references and allusions: He read Cervantes, La Rochefoucauld, Goethe, Austen, Keats, Landor, Valéry, Proust, D.H. Lawrence, A.J.A. Symonds, and T.S. Eliot. He dabbled in Chinese literature. He planned, though it never got underway, a biography of Lord Nelson. He was a philosopher with a literary sensibility.

This shows up in Oakeshott’s prose style, which, from the outset, was impressively aphoristic. In the first 20 pages of his *Notebooks 1922-86*, begun when he was 21, one finds the following sentences: “The first act of a democratic state would be to form an

aristocracy. . . . Religion is the poetry of morality. . . . Thought is always spasmodic. There is no such thing as an unbroken chain of thought. . . . The quest for God is the whole meaning of human life. . . . Present society is pretty well calculated to demoralize a great character." All these, be it noted, were written before he was 25.

Oakeshott's *Notebooks* are partly precisely that: notes made from observations from his reading of Plato, Aristotle, Spinoza, and others; insights from his experience; adumbrations of works he would like to compose. Other material can be intensely personal, some of it confessional. It can go from the most arresting general thought to a searing *cri de coeur*. Many of his entries are about what used to be called "love life," for Oakeshott at several points states that love is the ultimate meaning of life. Chunks of the *Notebooks* are given over to a woman he refers to as *La Belle Dame Sans Merci*, whom he pursued for decades without consummation.

As Edward Gibbon wrote of Charlemagne, so might one write of Oakeshott: "Of all his moral virtues, chastity was not the most conspicuous." Although thrice married, Oakeshott was a sedulous seducer, and often had two or three love affairs going on simultaneously.

The *Notebooks*, along with giving a more comprehensive idea of Oakeshott's general views than do any of his other books, gives us a stronger sense of the man. The ample subjects of Love, Death, and Religion dominate its pages, though they are not necessarily the most interesting, if only because they are not subjects upon which originality is readily adduced. Politics come in chiefly for contempt: "Politics are an inferior form of human activity," he writes. Later: "Politics seen as a struggle for power—is it any more than this?" He longed for a modern Voltaire "who would take the superstition out of politics."

The two things that qualify a person for being a conservative, he held, were having a passionate interest outside politics and a strong sense of mortality. And, dare one indite this in a political magazine: "A general interest and preoccupation with politics is the surest sign of a general decay in a society."

Still, politics is necessary to life lived among "people whom chance or choice has brought together."

The problem, Oakeshott felt, was not only that "politics is an uninteresting form of activity to anyone who has no desire to rule others" but that those it attracts are, too often, unimpressive human beings. At one point he calls them "scoundrels." What isn't required, but is too often evident, in politics is "manufacturing curable grievances." What is needed is the assurance of "the little things: to go where we like & when; having paid my taxes to spend my money on what I wish." His final word is this: "Politics is the art of living together & of being 'just' to one another—not of imposing a way of life, but of organizing a common life."

So much of Oakeshott's political thought is propelled by his unshakeable belief in the imperfection of human beings. Montaigne is his intellectual hero here, the Montaigne who understood that all human judgment and wisdom is fallible. In "A Place of Learning," Oakeshott disavows a belief in human nature, asserting that "there are only men, women and children responding gaily or reluctantly, reflectively or not so reflectively, to the ordeal of consciousness, who exist only in terms of their self-understandings." Self-understanding, though, is a rarity. "The intellectual life of the majority of men and women," he writes in the *Notebooks*, "is cankered by a passion for indiscriminate knowledge."

He underscored the wretched condition of "people who have no selves other than those created by 'experts' who tell them what they are." Others walk about with heads "so full of ideas that there is no room for sense." In a world of boundless distractions, serious education—not "education [that] is merely instruction in the current vulgarities"—is the only (if somewhat dim) hope: "To be educated is to know how much one wishes to know & to have the courage not to be tempted beyond that limit." Genuine culture, he held, teaches that "there is much that one does not want to know."

For Oakeshott the trick was somehow to be above the humdrum world and yet also be in it. "One is under an obligation to be happy with the here & now," he writes, a sentiment he expresses more than once. Yet he also notes that "it is certain that most who concentrate upon achievement miss life." On his gravestone, he wanted this bit of verse from the Scottish poet William Dunbar:

*Man, please thy Maker, and be merry,
And give not for this world a cherry.*

While still a young man, Oakeshott set out to achieve a life that dispensed with everything doctrinaire: "Whenever I have become conscious of a presupposition," he writes, "I have questioned it." And so he does, relentlessly and impressively, in the pages of the *Notebooks*. He even questions whether curiosity is a good thing, noting that neither Aristotle nor Aquinas thought it was. He deflates the importance of the study of mathematics beyond basic arithmetic. Even the sacred subject of science falls under his blade. He calls the scientist a blackmailer who "trades upon the stupidity of mankind. First he whets our appetites & flatters our hopes, then he lets loose a civilization more horrible than we could have imagined, & then he says 'you can't do without me.' But he does nothing to rescue us."

Michael Oakeshott may not have produced a systematic philosophy of the kind that supplies persuasive answers to life's most pressing questions. As often as not, he chipped away at what he deemed the hollowness of many of those answers, showing, persuasively, how unpersuasive they really were. Along the way, he provided in his teaching and writing a model of a clear mind operating at the highest power. On one occasion, he called himself a mere "interested spectator," on another, "a wanderer, that is, one with no destination, or only interim destinations." His own life's work, a brilliant ramble, resembled nothing so much as the glorious never-ending conversation he revered and to which he made so many notable, even unforgettable, contributions. ♦

Looking Backward

The gay sensibility in theater confronts success.

BY KYLE SMITH



Sydney Lucas, Michael Cerveris in 'Fun Home'

It's a heady moment for gay Americans. With victory after victory at the state level, public opinion on homosexuality having rapidly progressed from suspicion to grudging acceptance to celebration, and the Supreme Court seemingly on the verge of discovering a constitutional mandate that every state recognize gay marriage, all that really remain are a few mop-up actions. Crush a few evangelical bakeries out of existence and maybe force the Catholic church to conduct gay marriages, and there won't be much left to quibble about.

As the *New York Times* might put it, "For Gays and Lesbians, Total Victory, And a Few Nagging Questions." Among those questions might be: How much longer should the movement revel in victimhood and/or apartness? How much longer until a gay household becomes less noteworthy than

one that, say, contains a piano instead of a television? The answer is "probably never." If today's gay Americans live in serenity, the culture should turn its attention to yesteryear, which must look darker and more unsettling with each passing moment.

An excellent example of how the arts portray homosexuality is this year's Tony darling *Fun Home*, a transfer from Off-Broadway's Public Theatre that tied for most nominations (12), including one for Best Musical. The jaunty title, bright colors, peppy score, and carefully selected quotations from critics form the basis of a television advertising campaign promising "not just a new musical, a new kind of musical." The "fun" of the title, however, is short for "funeral," and the show is about a tortured gay man who commits suicide in a fit of guilt and shame.

Fun Home jumps back and forth between the present and scenes from the memory of lesbian graphic novelist Alison Bechdel (Beth Malone): from

her college years, when she discovers her sexuality and is played by Emily Skeggs, to her childhood in Pennsylvania in the 1970s, when, as played by Sydney Lucas, little Alison tries to unravel the tautly wound personality of her father, Bruce (Michael Cerveris). We learn near the beginning that Bruce committed suicide shortly after Alison came out to her parents as a young adult. His death is presented as the tragedy that underlies candy-colored suburban whims: Yes, this is yet another piece about the seething poisons in the Betty Crocker cake mix.

That the musical is based on Bechdel's own graphic-novel memoir of the same title, though, gives it a certain unassailability: This isn't the usual mean-spirited satire but a heartfelt tale about a real family that suffered a real loss. Bruce Bechdel, who apparently had a need for furtive, fleeting hookups with other men, did indeed die horrifically. But as Alison's much more ambiguous, more honest, and (consequently) more interesting book makes clear, it wasn't necessarily a suicide. Bruce was struck by a truck while carrying an armload of brush across the street. He left no note.

This is a highly unusual method of committing suicide: It promises almost certain pain but no guarantee of death. And it brings at least one innocent person into the act as an unwitting accomplice likely to be physically or psychologically injured. In the last year for which federal statistics are available, more than 99 percent of all suicides were committed by some method other than that of a pedestrian seeking to be struck by a vehicle. Yet the show presents it as undisputed fact that Bruce Bechdel committed suicide, after much anguished grappling with his sexuality.

In the graphic novel, Alison Bechdel writes more forthrightly: "There's no proof, actually, that my father killed himself." As evidence, she adduces "the fact that my mother had asked him for a divorce two weeks before" and "the copy of Camus's *A Happy Death* that he'd been reading and leaving around the house in what might be construed as a deliberate manner."

JOAN MARCUS

Kyle Smith is a movie critic for the *New York Post*.

Pretty thin stuff, inspector. Bechdel allows, in her memoir, that Camus (along with Proust and Fitzgerald) is exactly the type of novelist that her dad, a high school English teacher and funeral director, was always reading. Moreover, the truck driver who hit Bruce Bechdel said that Bruce, while clearing brush away from the yard of a farmhouse he was restoring, unexpectedly leaped backward into the road, as if he had seen a snake. Who embarks on a day of brush-clearing and suddenly interrupts it to commit suicide by stepping into traffic?

Moreover, Bechdel's linkage of her own coming-out announcement to her father's demise seems like sheer solipsism. "The idea that I caused his death by telling my parents I was a lesbian is perhaps illogical," she writes in the book. Perhaps. But it makes for a play that, for all of its alleged busting of taboos, fits neatly into a factory-made template about gays burdened by their secrets: "There's a certain emotional expedience to claiming him as a tragic victim of homophobia, but that's a problematic line of thought," Bechdel writes.

Onstage, tying the story of Alison's coming-out to her father's checking-out is the cue for an operatic wallow in emotion. Yet, sitting through the show, you may wonder why Bruce Bechdel was so conflicted. Why didn't he simply leave his wife and carry on as an out gay man? Moreover, the production is slippery about another facet of Bruce: He wasn't just gay. There are vague hints that he had a predilection for much younger men, which resulted in at least one arrest and six months of court-mandated psychiatric counseling.

The success of *Fun Home* rests, then, on a highly misleading tearjerker of a storyline meant to make us deplore the benightedness of an ignorant age, even as we congratulate ourselves on our more inclusive times. But in turning a frank memoir into a slick stage musical, the truth becomes expendable. "Tragically Conflicted Gay Man Commits Suicide" makes for a better dramatic hook than "Pedophile Accidentally Dies Crossing the Street." ♦

BCA

Blythe Spirit

The heart and soul of a late revelation.

BY JOHN PODHORETZ

William Butler Yeats might have described an old person as a "paltry thing, a tattered coat upon a stick," but then Yeats didn't live to see the 72-year-old actress Blythe Danner bloom like a bird of paradise in the first starring role she's had on screen in her 43-year career. *I'll See You in My Dreams* was made over the course of 18 days for \$500,000, and its modesty is evident in every frame. Though it is confidently directed by Brett Haley (who cowrote it as well), *I'll See You in My Dreams* is so slight and at moments so wispy that it almost seems to disappear as you're watching it. And yet there is Danner, quietly radiant, holding the movie together and deepening its scene by scene in an all-out star turn that not only heralds a renewed career but also makes you wonder what might have been back in the 1970s, when Danner was in her first full flowering.

She was then an ethereally beautiful young woman—one of the most daz- zlingly sexy people in America, whose angelic appearance was belied by a froggy voice that sounded whiskey-soaked. That voice was key to making her one of those rare performers who can mimic intelligence on screen. Danner plays smart. This was so much a part of her persona that I was astonished when, in the late 1970s, I met her briefly at a summer-stock theater in the Berkshires where she came to perform (and where I was making a disastrous showing of my teenage self trying to help build sets in the scene shop) to find her giggly and bubbly—

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I'll See You in My Dreams

Directed by Brett Haley



and to hear her refer to herself as "a ditz." It was an important lesson for me in the difference between what actors *are* and what actors *do*.

She never broke big, in part because her acting career took a back seat to her marriage (to the television producer Bruce Paltrow) and her children. Her son Jake is a successful television director; her daughter is Gwyneth Paltrow, who surpassed her mother in her mid-20s by becoming a major star and winning an Oscar before becoming a cautionary example of what can happen when people become too successful too young. (Paltrow's last really good performance was the one for which she won the Oscar, in *Shakespeare in Love*; that movie came out 17 years ago, just in case you want to feel like a tattered coat upon a stick.)

In her 50s and 60s, Danner made a second career playing loyal and long-suffering wives and mothers—most notably in the *Meet the Parents* series, in which she was required to gaze lovingly at Robert De Niro. She was ever the subdued straight man, the speaker of the screenwriter's thematic wisdom. So it was nothing short of a stroke of casting genius that Haley considered her for the lead role in his longshot Kickstarter project about a self-contained widow whose life and emotions begin to open up against her will when her dog gets sick and her pristine Los Angeles home is invaded by a rat.

Carol's sole emotional obligation is the care of her dog. Her only diversions



Blythe Danner

are the bridge and golf games she plays with longtime friends who have moved into a nearby retirement community connected to a golf course. She wakes at 6 A.M. She takes her pills, she reads the paper, she eats lunch in her small backyard by the pool, she watches TV, and at 11 P.M. she turns out the light. She drinks a little too much. Her husband died in a plane crash 20 years earlier; she is still living off the life insurance. She has never had a boyfriend. Her loving daughter, who lives in New York, comes to visit and says something inadvertently cutting about how Carol has always been absorbed by her own condition.

Carol forms two unexpected relationships, one with a sad and depressed thirtysomething pool cleaner (played by the wonderful Martin Starr) and the other with a jaunty real-estate developer who has just moved into the retirement community (Sam Elliott). The pool cleaner sees a photo of her singing as a young girl, and she says

something about having been in a band in Greenwich Village in the 1960s—something that seems unimaginable, given her controlled and even somewhat severe mien. One night, they end up at a karaoke bar. She gets up and performs for the first time since Greenwich Village.

Danner had a singing part in her first major film, the 1972 adaptation of the Broadway musical *1776*, in which she played Mrs. Thomas Jefferson and sang a peppy ditty called “He Plays the Violin.” Ah, the virtues of age! Danner’s pained, gorgeous rendition of “Cry Me a River” here is an absolute knockout, and if she is nominated for an Oscar early next year (which seems a distinct possibility right now), this song will be the reason.

But that’s not really the glory of her work in this film. Her Carol is an almost perfectly realized depiction of a certain type: sardonic, intelligent, brittle, and wonderfully well put together, but in a way that seems to put up a

barrier between her and the rest of the world. And the cracks in Carol’s reserve that give the movie its forward momentum are just tiny fissures in her cool surface, because Danner and Haley are honest enough to know a septuagenarian isn’t going to change very much when she changes.

As always with a very little movie, I feel I’m taking a risk in praising it, because one of the reasons I found it such a pleasure is that I was expecting almost nothing from *I’ll See You in My Dreams*. By definition, that won’t be the case for anyone who has read this review and chooses to watch it on-demand or even go out to see it.

Still, people do seem to like it, because, as I write, it’s the most successful small-budget film in release, and it is playing in more than 100 theaters. That’s not *San Andreas*, but it’s probably 96 more screens than Brett Haley ever dared hope for. As for Blythe Danner, she can cry herself a river all the way to the bank. ♦

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